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ABSTRACT

In October 1991, a Congressional committee heard testimony on proposals to expand and extend the Tribal Self-Governance Demonstration Project. Originally authorized in 1988, the project allows participating tribes to negotiate the transfer of Bureau of Indian Affairs (BIA) programs and services to the tribes through compacts of self-governance and annual funding agreements. A BIA representative supported proposed legislation to increase the number of participating tribes from 20 to 30 and to extend the project for an additional 3 years. Joint testimony of the Quinault, Lummi, Jamestown S'Klallam, and Hoopa Valley tribes stated that: (1) the project has been a tribally-driven initiative supported by Congress; (2) participating tribes have completed planning, negotiation, and initial implementation phases despite BIA resistance; (3) the project should proceed in carefully planned stages at a pace determined by tribes; (4) the project should include all BIA programs, particularly those BIA education programs currently excluded; (5) the Indian Health Service is the next logical project participant among government agencies; and (6) the project should allow the tribes to redefine the BIA's role and responsibilities. Testimony from the Oneida tribe of Wisconsin focused on the tribal elementary school, begun for the purpose of maintaining Oneida culture and language, and the need for the tribes to control education funds. (SV)

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TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

ED354135

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

H.R. 3394

TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

HEARING HELD IN WASHINGTON, DC
OCTOBER 3, 1991

Serial No. 102-34

Printed for the use of the Committee on Interior and Insular Affairs

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THURSDAY, OCTOBER 3, 1991

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, DC.

The committee met, pursuant to call, at 9:52 a.m., in room 1324, Longworth House Office Building, Hon. Bill Richardson presiding.

Mr. RICHARDSON. I would like to welcome everyone to this important hearing on H.R. 3394, the Tribal Self-Governance Demonstration Project Act. I would like to especially extend a warm welcome to the witnesses who are going to be testifying today.

I commend Chairman Miller for introducing this bill. I represent the largest Indian population of any Member in the House. I firmly believe it is good policy to give tribes more control over their own destiny.

The demonstration projects authorized under the Indian Self-Determination and Education Assistance Act are an important step in this direction, but it is time to revisit this issue. Although these demonstration projects were authorized in 1988, they didn't become reality until 1990. In addition, they are limited in scope both in the number of tribes participating and the life of the projects.

H.R. 3394 would extend the Demonstration Project authority three additional years and opens up the program to 10 additional tribes.

I look forward to working with Chairman Miller, minority and tribal leaders on this initiative.

[The bill, H.R. 3394, follows:]

I

102D CONGRESS
1ST SESSION

H. R. 3394

To amend the Indian Self-Determination and Education Assistance Act.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1991

Mr. MILLER of California (for himself and Mr. RHODES) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

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A BILL

To amend the Indian Self-Determination and Education Assistance Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribal Self-Governance Demonstration Project Act".

SEC. 2. EXTENSION OF TIME FOR TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT.

Section 301 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) (here-

after in this Act referred to as the "Act") is amended by striking out "five" and inserting in lieu thereof "eight".

SEC. 3. INCREASE IN NUMBER OF TRIBES PARTICIPATING IN PROJECT.

Section 302(a) of the Act is amended by striking out "twenty" and inserting in lieu thereof "thirty".

SEC. 4. COMPLETION OF GRANTS AS A PRECONDITION TO NEGOTIATION OF WRITTEN ANNUAL FUNDING AGREEMENTS.

Section 303(a) of the Act is amended by striking out "which—" and inserting in lieu thereof "that successfully completes its Self-Governance Planning Grant. Such annual written funding agreement—".

SEC. 5. ADDITIONAL FUNDING FOR SELF-GOVERNANCE PLANNING GRANTS.

Title III of the Act is amended by adding at the end thereof the following new section:

"SEC. 307. For the purpose of providing planning and negotiation grants to the ten tribes added by section 3 of the Tribal Self-Governance Demonstration Project Act to the number of tribes set forth by section 302 of this Act (as in effect before the date of enactment of this section), there is authorized to be appropriated $700,000.".

Our first witness is the distinguished Assistant Secretary for Indian Affairs, Dr. Eddie Brown. Dr. Brown, please step up. Welcome once again to this committee. You have many friends among both sides of the aisle, and I especially want to welcome you.

Your full statement will be inserted in the record. I would ask you, in the interest of time, to summarize. And perhaps you would like to identify the gentleman with you.

STATEMENT OF EDDIE BROWN, PH.D., ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WILLIAM LAVELL, DIRECTOR, OFFICE OF SELF-GOVERNANCE

Dr. BROWN. Yes. I appreciate the opportunity to testify on H.R. 3394, the Tribal Self-Governance Demonstration Project Act. With me is Mr. William Lavell, Director of the Office of Self-Governance.

Now, I have already submitted my testimony for the record, and as indicated, I would just like to make a few summary remarks.

Let me start by saying that much progress has been made in demonstrating a new way for tribal governments to work with the Federal Government. Further, I think that this demonstration project has become a good example of what can happen when Indian tribes, the Congress and the administration cooperate to the fullest extent possible.

Tribal leaders and staff have exhibited statesmanlike qualities in the development of this program. First, they initiated the concept some four years ago. Since the passage of the Act, in 1988, they have conducted research, held workshops, and recommended numerous changes in the structure and implementation of current government programs at their own expense. These actions most surely will affect many Indian tribes positively in the future.

The Congress has responded by authorizing the project and then by funding tribal planning grants. In FY 1991, Congress provided $3 million to assist with the tribal start-up costs and adjustments to program funding which are needed because of the difficulties in dividing some Bureau of Indian Affairs' resources without adversely affecting other tribes. Now Congress is sponsoring amendments to Title III to extend the project and require interested tribes to complete a planning process prior to entering a self-governance agreement.

The Administration has given this project a very high priority. President Bush, in a statement issued this past June, reaffirmed the government-to-government relationship, saying, "This is a partnership in which an Office of Self-Governance has been established within the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments."

Secretary Lujan indicated in May at the National Tribal Leaders Forum here in Washington that the self-governance program is here to stay for those tribes that wish to participate. During FY 1990 the Department negotiated seven self-governance funding agreements which resulted in 58 BIA programs totaling about $26.8 million being rolled into seven annual funding agreements for FY

1991. This year, renegotiations for the FY 1992 annual funding agreements have been completed on the original seven compacts and negotiations have just concluded with an additional 10 compact agreements that will commence on January 1, 1992.

Cooperative efforts by tribal governments, Congress and the Administration have brought the demonstration project this far, and it is my hope that this 3-way partnership can continue for the years to come.

Regarding the specifics of H.R. 3394, the Department strongly supports H.R. 3394 to extend and expand the Self-Governance Demonstration Project. We support extending the project for an additional three years and expanding by 10 the number of tribes that may participate in it.

We also believe that it is beneficial for tribes to successfully complete a planning process before entering into negotiations with the Department.

I would be pleased to answer any questions that the committee may have for me this morning.

Mr. RICHARDSON. Thank you, Dr. Brown.

[The statement of Mr. Brown follows:]

TESTIMONY OF DR. EDDIE F. BROWN, ASSISTANT SECRETARY

I appreciate the opportunity to testify on H.R. 3394, the "Tribal Self-Governance Demonstration Project Act", which would amend Title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note). I would like to comment on the progress that Indian tribes and the Department have made in implementing the Self-Governance Demonstration Project (the Project). Allow me first to discuss the Project in general and then address the specific provisions of the proposed amendments.

Since the founding of the United States, Federal policies toward American Indians have vacillated between separation and assimilation, and from conquering to protection. Over the last 110 years, Federal policy has gone from tribal termination with the Allotment Act of 1887 to the Indian Reorganization Act's renunciation of that policy in 1934 back to a policy of termination and assimilation in the 1950's.

In the last months of his Administration, President Johnson rejected the policy of termination and two years later President Nixon sent a milestone message to Congress that accepted the policy of Indian Self-Determination and Education Assistance Act. In 1988, the Congress authorized the Self-Governance Demonstration Project in Title III of the Indian Self-Determination and Education Act Amendments (P.L. 93-638, 25 U.S.C. 450, *et seq.*). President Reagan in 1983 reaffirmed the policy of Indian self-determination and emphasized a government-to-government relationship between Indian tribes and the Federal government.

President Bush, in a statement issued in June of this year, reaffirmed the government-to-government relationship, saying: "This government-to-government relationship has been the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation."

He went on to say: "This is a partnership in which an Office of Self-Governance has been established within the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments."

The creation and implementation of the Self-Governance Demonstration Project has been an important step in Indian self-determination, in improving the government-to-government relationship, and in helping Indian tribes to develop independence.

The Project has become a good example of what can happen when Indian tribes, the Congress and the Administration cooperate to the fullest extent possible.

Tribal leaders and staff have exhibited statesman-like qualities in the development of this program. At their own expense, they have conducted research, held workshops and recommended numerous changes in the structure and implementa-

tion of current government programs. These actions most surely will affect many Indian tribes positively in the future.

The Congress has responded by authorizing the Project and then by funding tribal planning grants. In FY 1991, Congress provided $3 million to assist with tribal start-up costs and program adjustments funding, due to the indivisibility of some Bureau of Indian Affairs (BIA) resources. Now Congress is sponsoring amendments to Title III to extend the Project and require interested tribes to complete a planning process prior to entering into a Self-Governance Agreement.

During FY 1990, the Administration negotiated seven self-governance funding agreements which resulted in 58 BIA programs totalling about $26.8 million being rolled into the seven annual funding agreements for FY 1991. This year, renegotiations have been completed on the original funding agreements for FY 1992 and negotiations have just concluded on another 10 funding agreements that will commence on January 1, 1992.

Last year, a Self-Governance Demonstration Project Council was formed, I chair this Council which includes the Deputy Commissioner—Bureau of Indian Affairs, the Counselor to the Secretary, the Solicitor and the Deputy Assistant Secretary—Indian Affairs. These individuals were selected to ensure that the highest level of Departmental attention is given to the Project. A new Office of Self-Governance was created and a Director and staff of two are now working in that office. In addition, we have several people on loan to the office. We are in the process of completing the Self-Governance staff.

Cooperative efforts by Tribal Governments, Congress and the Administration have brought the Project this far. It is my hope that this three-way partnership can continue for many years to come.

As I turn to the specifics of H.R. 3394, let me reiterate what Secretary Lujan said in May at the National Tribal Leaders Forum here in Washington—the Self-Governance Program is here to stay for those tribes that wish to participate. In that vein, the Department strongly supports the intent of H.R. 3394, to extend the Self-Governance Demonstration Project. We support extending the project for an additional three years and requiring tribes to successfully complete a planning process before entering into negotiations with the Department or a Self-Governance agreement.

The Self-Governance Demonstration Project represents a natural extension of the self-determination and government-to-government policies initiated over 20 years ago. For those tribes which desire it, self-governance agreements offer an opportunity for tribal governments to gain maximum discretion over the use of Federal resources. Developing this Demonstration project to its fullest potential remains one of the highest priorities of the Department. We look forward to sharing with the committee the relative costs and benefits of the Project.

We have determined that H.R. 3394 is not affected by the Pay-As-You-Go (PAYGO) provision of the Budget Enforcement Act (BEA) of 1990, but is subject to the domestic discretionary funding caps mandated by the Budget Enforcement Act.

H.R. 136

I also appreciate the opportunity to testify on H.R. 136, which would amend the Act of August 9, 1955, 25 U.S.C. 415(a), by inserting "the Cahuilla Indian Reservation", after "Soboba Indian Reservation."

Enactment of H.R. 136 would enable the Cahuilla Tribe to enter into long term leases, up to 99 years. Many other tribes have this authority.

At present, the Cahuilla tribe has authority only to lease land for a twenty-five year period, with the option to renew for another twenty-five years. All leases require the approval of the Secretary of the Interior as trustee.

Enactment of H.R. 136 would enable the Cahuilla Tribe to enter into long term leasing with Range Corporation and Select Housing Associates, Inc., not exceeding 99 year periods, for the purpose of developing housing units, a golf course, and other associated business.

We have no objections to the Cahuilla Tribe having this additional authority to enter into long term leases. I also note that H.R.136 has tribal support through Tribal Resolutions 90–7 and 91–06.

We have determined that H.R. 136 is not affected by the Pay-As-You-Go (PAYGO) provision of the Budget Enforcement Act (BEA) of 1990.

This concludes my prepared statement and I will be happy to respond to any questions from the Committee.

Mr. RICHARDSON. Do you think that the Project should be expanded to include all the programs administered by the Depart-

ment of Interior? For instance, do you continue to support the statutory exemptions for education programs and the Indian roads programs?

Dr. BROWN. Let me say that it is my personal belief, and I think of the Administration, to try to include as many programs in there as possible. Within the Department, it is the statement that anything that is eligible to be 638 contracted can be included. As you know, we are currently working on the amendments to the Self-Determination Act for contracting. Secretary Lujan has sent a very strong message that this will involve not just the Bureau of Indian Affairs, but the total Department. So, as we move forward and define those programs that are eligible for 638, yes, we would include those.

Now, those that would involve other departments, such as the Highway Administration and IHS, while I believe personally as well that it should include those, that would have to be something that would be addressed with those officials within these departments. But we would be happy to work with whomever to address that issue.

Mr. RICHARDSON. Dr. Brown, given your strong support for this program, when do you think the Congress should make this Project permanent? And I guess my question centers on the fact of when will we know whether self-governance works—an assessment of its strengths and weaknesses?

Dr. BROWN. That is the reason, I think, why we extended it, are requesting and supporting the extension to three years. We have devised some baseline measurements that tribes have developed along with the Bureau to begin to measure the kind of success and the impact that program will have. It is our hope that with the addition of three years that would give us the kind of indication that we would need to begin to open that up and make that a program for all tribes. Clearly that is our intention at this time.

Mr. RICHARDSON. I would like your views on, and I know this is maybe a little bit down the line, expanding the Demonstration Project to include the Indian Health Service. What is your view on that?

Dr. BROWN. You know, that is moving in that direction as we further define those programs that are eligible to be 638 contracted through IHS. We are currently working jointly with IHS to develop those regulations. That has been a long, sometimes frustrating process but it is one that continues to move, and, hopefully, we are beginning to see the light at the end of the tunnel on that. But we would certainly want to work with IHS and the officials over at HHS to see just how that might be done.

Mr. RICHARDSON. What about making the Office of Self-Governance a permanent structure for the duration of the Project, and this may not be directly related, but exempting demonstration tribes from the requirements of secretarial approval of attorney contracts under 25 U.S.C. section 81? I know they are not related.

Dr. BROWN. Okay. Excuse me.

Mr. RICHARDSON. First, making the Office of Self-Governance a permanent structure for the duration of the Project.

Dr. BROWN. It is my understanding based on the forms that we have filled that that is a permanent structure within the Assistant

Secretary's office that has been established, and those processes necessary to establish that office as a structure have been done, so that it is formally recognized as an Office of Self-Governance within the Assistant Secretary's office.

In regards to the second question, let me ask Bill Lavell, who comes with a great deal of experience in regards to the legal aspect of this.

Mr. LAVELL. In regard, Mr. Chairman, to the question concerning approval of attorney contracts, that has been discussed at some length in our various meetings with the tribes and I know of no reason the Department wouldn't favor the waiver of it for project tribes.

Mr. RICHARDSON. So, giving them a waiver.

Several of the tribal participants, Dr. Brown, have described their difficulties, or they will be I am sure after you testify, with various BIA officials resisting the implementation of self-governance projects. What steps do you propose to eliminate these unnecessary obstacles to self-governance?

Dr. BROWN. One of the first things we did, of course, since this was a new program we found that there was a lot of misunderstanding on both sides, within the Bureau and with tribal governments, of what exactly self-governance was and what its intention and long-range impact would be. We found that because of this confusion there was also not clear direct policy decision and policy direction given out to the field offices of the Bureau of Indian Affairs.

As a result of that, Secretary Lujan and I developed a monitoring committee, which I chair, made up of a counselor from the Secretary, the Deputy Commissioner, the Solicitor's Office, and some other key members of my staff, to ensure that we are able to make policy decisions and provide the clear policy direction to our staff that is needed so that there is no confusion as to the direction that we are headed.

Second, we have involved our Area Director and Superintendent, as well as our budget people, in the day-to-day negotiations with tribes as we begin to break out the dollars and come to an agreement on the compact. We have found that it has been very favorable to include our field people directly with that.

Third, we are planning a major training session that will be held in November that will include our Area Directors, our Superintendents who are involved in this, as well as some of our central staff, as well as the tribes, to come together to address what we have done thus far, what are the concerns and issues, and how do we get around those.

So I feel that we are well on our way. And like any program that is evolving, there will be issues that arise on which we will have to meet and develop policy, but I feel we have thoroughly addressed that and are prepared to move forward.

Mr. RICHARDSON. Dr. Brown, some of the smaller tribes have expressed concern that they are handicapped under self-governance, especially because of limited resources. And my question is what steps have you taken to improve the availability of budget information to self-governance tribes, and have you done any research,

that is, the BIA, to determine appropriate levels of funding for self-governance tribes, especially some of the smaller ones?

Dr. BROWN. This is an issue that plagues us, I think because it gets us all back into the equity of funding. And when we look at the historical funding development, we find that there is no clear funding based on need, but it is historical development as well as tribes have been able to come in and to increase their budget. So you do have concern as to the percentage of budgets that small tribes have. Some tribes may have more dollars than others.

That is something that we are addressing with the reorganization task force on how do we begin to move toward greater equity funding. So that is one area on which we are working.

The other is why we support the preplanning grant, or the planning grant prior to coming in. It allows the tribes in that time to begin to take a look at the dollars that they have, how those dollars will be broken out, and to have a clear picture of exactly what dollars they will have to work with, what the shortfall might be, and how we can begin to use the dollars that have been appropriated by Congress; namely, the $3 million, to meet some of that shortfall to ensure the greatest opportunity for success in those programs.

Mr. RICHARDSON. Will any reorganization be required, any new planning, to accommodate the expanded authority of this Project? Will you be discussing this at that meeting too?

Dr. BROWN. Yes. Yes, we are looking at that, and if you have any specific questions on that, Mr. Lavell is prepared to answer.

Mr. RICHARDSON. Mr. Lavell, could you give us some of the issues that may be raised in the reorganization and planning, that you would anticipate the tribes would raise?

Mr. LAVELL. Yes. In last year's negotiations, FY 1990 compacts, some reorganization was done. For instance, the outstanding example is the Cherokee compact eliminated the entire Cherokee agency. The money equivalent of one position was held back to the Area Office to perform the trust function.

What we are going to face in this November meeting is discuss given an agency with five tribes and one tribe, what should self-governance look like. What we do in the negotiation to ensure that tribes that are not in self-governance are not adversely impacted is make sure that enough money is held back to serve them. And, to the extent that that shorts the self-governance tribe in their fair share of a given program, that is made up by the shortfall funds, the $3 million fund that the Congress created last year. And I might say without that fund it just wouldn't work.

But in that range we still have, because you have lost one-fifth of your workload, presumably, what your staff should look like now. And we are going to discuss that and get to talking about what kind of staffing patterns are appropriate. We will be borrowing in a larger part from what the reorganization task force is doing in forming model-looking agencies and area offices—same thing at the area level.

Mr. RICHARDSON. Dr. Brown, you have testified in support of this bill. Is there in the view of the Department of Interior an urgency that we pass it soon as opposed to later? Given your dealing with the tribes on this matter, do you have any view on the timing? Is

this something that you would recommend to this committee we take up expeditiously?

Dr. BROWN. I would say right now one of the things that has happened is we have been able to go out and talk to a number of tribes, share information. The tribes that currently have compacts have done an excellent job of sharing information and educating the other tribes what the impact would be and creating interest. So naturally, we see a development of—right now we are limited to 20 tribes. We will have 17 in 1991. We know that there are many more tribes out there that want to consider it. We would like to have that ability to be able to consider 30 tribes, rather than 20. And that bill would be timely for us.

Mr. RICHARDSON. Dr. Brown, I have concluded any questions. My colleague, Ben Nighthorse Campbell, has come in. I am going to excuse myself for about 10 minutes to vote on the Journal, and I wondered if—have you voted?

We will recess for 10 minutes. Dr. Brown, thank you—do you want any questions of Dr. Brown. Dr. Brown, both of you, thank you for testifying.

We will proceed in 10 minutes. We will recess for 10 minutes and return for the second panel.

[Recess.]

Mr. RICHARDSON. We will proceed with our second panel. I would like to invite to the witness table the Honorable Joe DeLaCruz, President, Quinault Business Committee, of Taholah, Washington; the Honorable Henry Cagey, Chairman of the Lummi Indian Business Council, Bellingham, Washington; the Honorable William Ron Allen, Chairman, Jamestown Klallam Tribe, from Sequim, Washington.

Now, even though I come from a Native American district, it is possible that I did not pronounce either one, two or five of those names properly. My apologies. I only speak Navajo. I could not speak every single language.

First of all, let me welcome my colleague from Colorado, Ben Nighthorse Campbell, and ask him if before we move ahead with the witnesses he would like to say anything?

Mr. CAMPBELL. I have no comments, Mr. Chairman.

Mr. RICHARDSON. As the witnesses know, your statements are fully incorporated in the record. I would ask you to summarize in five minutes. We are going to put a timer on because of the schedule in the House this morning. Several Native American issues, the Duro bill of which I am a conferee, which I know is important to you may be coming up this morning, and unfortunately we may have to accelerate the pace of the hearing. We will proceed with every witness, but if we seem in a hurry, we apologize.

Honorable DeLaCruz, please proceed.

STATEMENTS OF HON. JOE DeLaCRUZ, PRESIDENT, QUINAULT BUSINESS COMMITTEE, TAHOLAH, WA; HON. HENRY CAGEY, CHAIRMAN, LUMMI INDIAN BUSINESS COUNCIL, BELLINGHAM, WA; HON. WILLIAM RON ALLEN, CHAIRMAN, JAMESTOWN KLALLAM INDIAN TRIBE, SEQUIM, WA

Mr. DELACRUZ. Mr. Chairman, you probably pronounced my name the way it is supposed to be pronounced. I don't know how DeLaCruz got up in the Northwest .

But I am the President of the Quinault Indian Nation and, for the record, I am not new to the Indian business. I served back in 1980 two terms as the President of the National Congress of American Indians, and I served two terms as President of the National Tribal Chairman's Association, so I am very familiar with the history of how the Self-Determination Act came about and how we move today to the project we are talking about, the Self-Governance Demonstration Project.

Because of the time constraints, I will highlight my testimony, the parts of it that I think are important for this committee. As far as the Quinault President and our participation in this Project, Self-Governance Demonstration Project, it is not a new idea. It is something that has been pushed by the tribes. As I was President of the National Congress of American Indians, going back through the resolutions, of the history of the organization, I first found services of resolutions by Indian tribes back in 1947 talking about their rights to self-determination, self-governance and government relationships.

The Self-Governance Demonstration Project elevates the government-to-government relationship and builds a new way of doing business between tribes and the United States. We are building a model which Congress and tribes may some day consider as a policy alternative. Extension of the Project will allow participating tribes, other tribes, the administration and Congress the opportunity to study and evaluate the implementation of the Project and our experiences.

We recently completed our first year of implementation and it has been a year of transition. We have discovered the BIA has no monopoly on bureaucrats. Our program managers and staff can also be entrenched, and it has taken time for them to adjust and learn to operate under self-governance, as opposed to BIA contracts.

Key provisions from Title III, our compacts and our annual funding agreements are the trust relationship that the United States has to tribes is protected. Tribes may redesign, consolidate or change BIA programs to meet needs and priorities. Secretarial waivers of inhibiting rules and unnecessary bureaucratic regulations which can be replaced by tribal guidance documents. As Dr. Brown pointed out, we have developed mutually determined baseline measures, and most importantly, tribal councils now determine our own program priorities and allocations of resources.

I want to ask for support from this committee to consider technical amendments which would benefit and advance the demonstration. These technical amendments would include previously excluded BIA programs and services and provide instructive language

for inclusion for roads construction, include all agencies in Department of Interior, direct the IHS—Indian Health Services—to begin planning for the inclusion in the Tribal Self-Governance Demonstration Project, allow self-governance tribes to approve attorney contracts without BIA oversight.

The vision of the Quinault Tribe's Self-Governance Demonstration Project should evolve at a pace and direction established by tribal councils in our communities. Tribal decision-making authority, flexibility, control and priority-setting are the heart and substance of the Demonstration Project. Accountability and responsibility for provisions of general government service to our tribal members are paramount, and we need to recognize the recognition of the government-to-government relationship and our status as governments in the forefront of our goals for the project.

And I appreciate the opportunity to come before this committee on this important hearing. Thank you.

Mr. RICHARDSON. Thank you very much, Mr. DeLaCruz.

[The statement of Mr. DeLaCruz follows:]

TESTIMONY OF JOSEPH B. DELACRUZ, PRESIDENT QUINAULT INDIAN NATION

I am Joseph B. DeLaCruz, President of the Quinault Indian Nation. The Quinault Nation was one of the original ten Tribes authorized to participate in the Tribal Self-Governance Demonstration Project. After two years of planning, research, and communication efforts, we were one of seven Tribes nationally to cross the threshold to implementation of the Tribal Self-Governance Demonstration Project for Fiscal Year 1991. In June, we successfully completed negotiations with the Department of the Interior for our second year of implementation of his historic initiative. Based on our experience with the Self-Governance Demonstration Project, I appreciate the opportunity to testify in support of H.R. 3394 extending the authorization of Title III of P.L. 100-472.

Under the current authorization, the Tribal Self-Governance Demonstration Project provides an experimental opportunity for twenty Tribes to negotiate for the transfer of selected Bureau of Indian Affairs (BIA) "programs, services, functions, and activities" to the Tribal governments while maintaining the trust relationship the United States has with Tribes and Indian people. The intention of the original legislation was to allow the Project Tribes to conduct planning and research regarding the assumption of BIA responsibilities and based on Tribal decisions to eventually negotiate for those "programs, services functions, and activities" which were to be assumed by the Tribes.

TRIBAL FLEXIBILITY, CONTROL, AND POLITICAL AUTONOMY: THE ATTRACTION OF THE SELF-GOVERNANCE DEMONSTRATION PROJECT

From the Quinault perspective the direct benefits of the project are: increased flexibility and control to the Tribe; freedom to consolidate or redesign the Bureau programs to meet the needs and priorities of the Tribe; expanded opportunities to waive unnecessary bureaucratic regulations; and, the opportunity to realize increased funding available for the delivery of on Reservation services rather than continuing to support the multiple layers of the BIA bureaucracy. Political autonomy, empowerment, and to be recognized on a government-to-government basis are among the political realities we seek to achieve by our participation in this Demonstration Project. In some respects, we are talking about restoring political authority which had been displaced for more than a century.

BIA PARTICIPATION IN THIS TRIBALLY DRIVEN INITIATIVE WILL ULTIMATELY BE FORCED BY TRIBES AS THE EXPRESSED WILL OF CONGRESS IGNORED

The BIA restructing, outlined in the original legislation and legislative history, has not occurred. In due time, this Tribally driven initiative and the incremental increase of participating Tribes will leave the BIA and no other option than to comply with the Congressional directives. The reluctance of the BIA to plan, prepare, or cooperate with the provision of useful budget information for the Self-Governance Project have impeded our progress, forced us to accept key assumptions on

blind faith during negotiations, and limited our own ability to plan for the Quinault Self-Governance Project.

KEY BIA AND INTERIOR DEPARTMENT OFFICIAL HAVE BEEN SUPPORTIVE

This is not to suggest we have not had support from the key officials within the Department of the Interior or the BIA. Secretary Lujan, Assistant Secretary for Indian Affairs, Dr. Brown, and the Director of the Office of Self-Governance, William Lavell, have been instrumental in establishing policy direction during critical junctures of the Project. We have also received courageous support from Stan Speaks, our Area Director during his tenure as "Acting Deputy Commissioner of Indian Affairs" and Ron Brown, who served as "Acting Area Director" in his absence. The problem lies with the soldiers, not the generals. BIA staff in key positions at the Agency, Area, and Central Office are opposed to the project on principal, feel personally threatened, or refuse to accept the fundamental concepts of Tribes making their own decisions. We want to be allowed to develop our own solutions and learn from our mistakes. In concept and in practice, the Self-Governance Demonstration Project expands our capacity to perform as independent Tribal governments and we expect to be granted the same recognition that is afforded to other forms of government.

SELF-GOVERNANCE DEMONSTRATION PROJECT—AN EVOLVING PROCESS; NOT RADICAL REFORM

Implemtation of our Self-Governance Demonstration Project has been a gradual process. We have just entered our second year of implementation and are still in the process of transition. I look forward with excitement as we adapt to our new roles and responsibilities in our government-to-government relationship. As we continue to explore and expand this project, I am anxious for us to begin creatively addressing our problems and needs. Although I am eager, I am also patient and somewhat cautious, as there will be successes and disappointments. The Self-Governance Project should evolve at the pace and direction determined by the Tribal Councils.

Congress, Tribes, and the American public are searching for solutions to address Indian problems. While I believe we are moving in the right direction, we must test the Self-Governance concept. We must maintain the experimental and exploratory nature of the Demonstration Project. We should not get so enthralled in the positive enthusiasm which we bring to the Project and initiate long term solutions until we have the opportunity to study and examine the results. Indian Country has been deceived by great promises and unfulfilled expectations in the past. This time we want to control the Project, we do not want the Project to control us. This is the essence of self-determination and self-governance.

We must accept the reality that there are no panaceas to the many problems we face on the Reservations across the Country. We can not institutionalize immediate reforms. At Quinault, we do think something like the Self-Governance Project, or, something shaped from our experiences may likely to one of the policy alternatives available to Tribes in the future. We will proceed cautiously, and we will continue to emphasize the critical importance of the planning phase of the Project. The planning and budgeting requirements do not stop with implementation of the Project, but are in fact functions more important for effective implementation.

SUPPORT PLANNING FOR SELF-GOVERNANCE; PREPARATION AND STABILITY—PREREQUISITES FOR SUCCESS

Tribes must take seriously the planning component of the Demonstration Project and Congress and the BIA should ensure reasonable funding for these planning activities. The BIA must also initiate their own internal planning in response to the Self-Governance Demonstration Project and to comply with provisions contained in Title III of P.L. 100-472. For Tribes, the planning and research efforts in preparation for the Demonstration Project can be an invaluable opportunity to examine the organizational, legal, fiscal, political, and cultural structures which shape out Tribal governments. Without the time and resources to prepare for participation in the Self-Governance Project, some Tribes may participate because of misconceived notions that Project value is increased dollars rather than the principles of Tribal authority to make decisions.

The foundation of the Quinault Self-Government Project was built upon our own internal planning and research efforts. Today, I am convinced that the potential of Self-Governance is established by a combination of the planning efforts and the stability of Tribal governments. As we began our efforts, we were confronted by naysayers and rumors of termination. Congress and Tribes asked the BIA for budget

data and received little no cooperation. Until this year, the BIA Budget Justification contained no funding for Self-Governance planning or negotiations. Each year Congress provided support for our efforts. The BIA provided no resources on behalf of the Project and made no effort to plan for any changes to their organization until after we negotiated our Compacts and first Annual Funding Agreements.

TRIBALLY DRIVEN INITIATIVE—SHAPING A NEW PARTNERSHIP

The Self-Governance Demonstration Project came to fruition because of Congressional authorization and appropriations support. The development of this initiative has came from Tribes, particularly those whose Chairmen sit here with me on this panel. We have confronted obstacles from the BIA, rumors about termination, and challenges to the integrity of our Tribal governments. We have faced adversity from those who make their living off of the miseries of Indian people and we have responded with the facts and reasonable expectations. We have worked together in our efforts and developed creative solutions while the BIA creatively invented problems. With support from this Committee, Chairman Yates of the House Interior and Related Agencies Subcommittee on Appropriations, the Senate Select Committee on Indian Affairs, and the current leadership in the Administration, we are constructing a new relationship, a new Federal/Indian partnership.

PROCEED CAUTIOUSLY, LET THE EXPERIENCES DEFINE POLICY IMPLICATIONS

In order for Congress, the Tribes, and the BIA to examine the long range implications of this Project, Title III called for semi-annual reports to Congress based on "mutually determined baseline measures". Ignored by the BIA during the first two and 1/2 years of the Project, we were able to negotiate a process for establishing these measures and guidelines for these reports. While developing these guidelines, it became apparent that with only three years of implementation, as authorized by Title III, we would have very limited information or documentation about the experiences of Tribes participating in the Demonstration Project. The report to Congress should tell the story of our experiences and provide a sound basis for future Federal/Indian policy decisions.

The extension of the Project for three more years will provide valuable information which can be used to evaluate the Tribal Self-Governance Demonstration Project, and to explore Self-Governance as a viable option for some Tribes in the future. Given the differences which exists among Tribes, it is likely many tribes will want to maintain the status quo of their relationship with the BIA albeit under P.L. 93-638 Contracts or allowing the BIA to provide all the services. As the details associated with the Self-Governance Project implementation begin to emerge and become refined, many Tribes may see the Project as a means to assume greater accountability and responsibility in their governmental affairs and in providing services to their people.

The participating Tribes in the Self-Governance Demonstration Project have been the pioneers in forcing the BIA bureaucracy to accept a changing role as the Project has developed. Although the BIA is not yet established in the role of Trust Advocate and Trust Manager as opposed to an interventor in Tribal Affairs, we have their attention. We have opened the door to be welcomed at the table as equals.

DEMONSTRATION PROJECT SHOULD REMAIN A CONTROLLED EXPERIMENT

Expansion of the Self-Governance Demonstration Project needs to be well conceived and thought out. We are testing uncharted waters and we do not want to be drowned by our enthusiasm, the promise of our success, or the desperation in response to the BIA problems and the problems in Indian County. The Project is dynamic and easily misunderstood by Tribal members, non-participating Tribes, and others who have interests in Indian Country.

Expanding the Project to include up to thirty Tribes may allow greater geographical representation, diversity among participating Tribes, and lead to more significance in the findings and conclusions drawn from experiences in the Project. Although geographic representation may be difficult to achieve, allowing at least one Tribe from each Area to participate in the Project will provide a presence across Indian Country and regional opportunities for all Tribes to observe the implications for future Federal/Indian policy.

Expansion beyond thirty tribes may be problematic in terms of organizational capabilities of the Office of Self-Governance and the BIA's ability to cooperate and prepare for Tribes entering into negotiations and implementation. It may also result in purposeful or even unintentional damage to the Project, by the BIA convincing Tribes to become involve without proper preparation, forethought as to internal

Tribal instabilities, or recognition of the uncertainties which exist in an experimental demonstration. For many Tribes, decisions regarding Self-Governance should be delayed until the experiences have been documented and assessed by the Baseline Measures Reports and other proposed policy studies.

ADD PREVIOUSLY EXCLUDED BIA PROGRAMS TO DEMONSTRATION PROJECT AND PROVIDE INSTRUCTIVE LANGUAGE FOR BIA ROAD CONSTRUCTION

Opening the Demonstration Project up to include other Federal Agencies needs to be carefully explored. We would suggest including the legislatively excluded BIA Programs first, and clarify with instructive language eligibility to negotiate BIA competitive grants, discretionary programs, and project based programs where funding is pipelined several years in advance and where criteria is nebulous.

Under Title III, P.L. 100-472, the Tribal Self-Governance Demonstration Project allowed for Tribes to enter into Annual Funding Agreements which included funds for programs and services which Tribes would have been eligible to receive under contracts and grants and for funds specifically related to those services. However, we have been stifled by the BIA in our efforts to include grants and administrative dollars associated with certain BIA programs.

We have proceeded with negotiations of our Annual Agreements under the assumptions that any program, service, function, or activity which can be contracted under P.L. 93-638 can be included within our Self-Governance Project. The BIA Roads Construction program can be contracted, yet the BIA maintains only approved road construction projects can be considered for Self-Governance and Road Administration funds have been excluded from consideration.

At Quinault, during our first year of implementation we did not include Roads Construction because we would have received less than $250,000 when the 1990 BIA Transportation Plan for the Quinault Reservation documented an annual road construction need in excess of $700,000. This year we included a small road sign/safety project of less than $10,000 in our Annual Agreement to test and analyze the process. Under Self-Governance, Roads Construction should be like other BIA programs and Tribes should be able to negotiate for all or part of the particular program or service. To address this problem and for consistency, we ask this Committee to consider a technical amendment which allows funds for Road Construction and Road Administration to be included in Annual Funding Agreements provided that such funds may only be expended for road construction and related activities.

Before moving on to other Federal Agencies, the inclusion of all BIA programs and services in the Tribal Self-Governance Demonstration Project needs to be addressed. Without a clear directive of Congressional intent, we will continually face challenges from the various branches within the BIA as to why a particular program can not be included in Self-Governance Agreements. At this time, it makes sense to revisit those BIA programs and services which were specifically excluded from the Demonstration Project, [Title III, Section 303(a)(3)] and to include those programs, particularly the education programs, as logical additions to the Self-Governance Project at this time. The inclusion of other Agencies in the Interior Department in the Project should also be given serious consideration.

EXTENSION TO OTHER FEDERAL AGENCIES SHOULD BE A LOGICAL AND STAGED PROCESS

It is time to approach the Indian Health Service and direct them to prepare for involvement in the Demonstration Project, to initiate internal planning and restructuring activities, and to cooperate with Self-Governance Tribes. Given our experience with the BIA, we would suggest that the involvement with other agencies be based on some kind of staged process. For example, IHS could feasibly be available for consideration by Demonstration Tribes after three years of implementation of Annual Funding Agreements with the Department of the Interior and BIA programs.

Congress and the Tribes must work together to force IHS to respond, to provide useful and complete information on administrative infrastructure and budget distributions. We must learn from our recent experiences with the BIA and this joint effort would be necessary so that we can also avoid the problems and obstacles we have faced with IHS in the past. We ask this Committee to support a technical amendment to direct IHS to initiate planning and research activities for eventual incorporation of IHS into the Demonstration Project.

Administration for Native Americans and other Department of Health and Human Service Agencies would be logical to follow the BIA and IHS. After that, perhaps there is a trail to "New Federalism" as the doors to other Federal Agencies can then be explored.

CONTINUE SUPPORT FOR SELF-GOVERNANCE EDUCATION AND COMMUNICATION PROJECT

With all the misunderstandings, rumors, and misinformation which has been used against the Tribal Self-Governance Project, we appreciate the Congressional support for the Self-Governance Education and Communication Project. We understand the fears of uncertainty and change which exist. We understand the suspicions which exist throughout Indian Country when it comes to changing the relationship between Tribes and the United States. Indian people have a right to be afraid given the history of failed Federal/Indian policies. We have used the Education and Communication Project to address these justified fears and concerns. We want non-participating Tribes and the BIA to be informed about the Project and what we are doing. As the Self-Governance Project evolves, and given the dynamic nature of what we are trying to accomplish, the Education and Communication Project needs to be maintained. All Tribes need to have knowledge of what we are doing, as they will need to make informed decisions on the Project in future years.

BASE FUNDING FOR SELF-GOVERNANCE DEMONSTRATION PROJECT TRIBES; FISCAL CERTAINTY AND STABILITY—A CONSIDERATION FOR THE FUTURE

As we make progress in our understanding of the BIA Budget and how dollars flow from the Central Office, Area Offices, and Agencies, and, how dollars, flow horizontally across programs within and between BIA levels, we can begin to isolate dollars which are associated with or related to "the programs, services, functions, and activities" which we assumed. As we further define and isolate these dollars, we can begin to determine the establishment of base funding for our Self-Governance Project. The purpose of base funding would be to eliminate fluctuations of funding for particular programs based on arbitrary bureaucratic decision making in the Central Office. While we made headway this year in our negotiations, it is a laborious and challenging task to safeguard our interests across the entire BIA Budget. Once base funding is established with some kind of inflationary indexing, negotiations could then focus on our share of new programs and the addition of existing programs previously not assumed by the Tribe or included in our Agreements.

The establishment of base funding with inflationary indexing provides fiscal certainty and stability which presently does not exist under "638 Contracts". We seek to achieve simplicity in budgeting and distribution of funds for Self-Governance Tribes and the Office of Self-Governance. The unresolved issues are timing for the establishment of the base funding amount, making sure programmatic increases are shared with Self-Governance Tribes, and developing assurances that artificial budget manipulations are not used to the detriment of the Self-Governance Tribes.

The question at Quinault becomes: when is it appropriate to assume we have isolated all the dollars associated with the programs and services we have assumed? We know we are not there yet and even with the supplemental funds provided for Fiscal Year 91, we are not sure. As we continue to make progress in our negotiations, we believe that in the next two or three years we may reach a confidence level which will enable us and the Administration to jointly establish a base funding agreement for the Quinault Self-Governance Project.

ALLOW SELF-GOVERNANCE TRIBES TO APPROVE ATTORNEY CONTRACTS

Everyone agrees Section 81, Title 25, USC, needs to be repealed and no longer has a place in contemporary Indian affairs. The paternalism of Secretarial approval of attorney contracts with Indian Tribes is contrary to all notions of self-governance and self-determination. The redundancy and waste of time and resources on this bureaucratic exercise by the Tribes and by the BIA are unnecessary. With the experimental nature of the Demonstration Project, we ask that you consider a technical amendment that respects our ability to govern and to approve attorney contracts without BIA oversight.

SELF-GOVERNANCE IS NOT TERMINATION OF BIA

The restoration of decision making authority to Tribes via the Self-Governance Project is not going to destroy the need for the BIA. Many Tribes will want to continue in the Self-Governance Contract mode or allow the BIA to continue to be the service provider. The Self-Governance Demonstration Project in the long term could allow the BIA the opportunity to refine and target their role. The role of Trust Advocate and Trust Manager for trust oversight by the BIA needs to be explored and developed. The BIA as a Tribal Advocate with other Federal Agencies should also be assessed, if for no other reason than to penetrate the "them vs. us" mentality which has been institutionalized by both the Tribes and the BIA. The BIA as a Tribal Ad-

vocate, the "new partnership" between Tribes and the BIA, can be developed without paternalism and historic mistrust.

THE SELF-GOVERNANCE PROJECT IS EXPERIMENTAL; IT IS NOT AN EQUITY PROJECT AND IT IS NOT NEEDS BASED

Among the misunderstandings and confusion about the Self-Governance Project by the BIA, by Tribes, and by high level officials is that the Self-Governance Project can be used to address some ill defined issues of equity between Tribes and even between Area Offices. The Self-Governance Demonstration Project is about a new way of doing business between participating Tribes and the Federal Government. Attempts to thrust the equity issue onto the Project is considered an effort to hide historic BIA mismanagement and distort the real issue of lack of funding at the Tribal level. The Demonstration Project can not be responsible for BIA budget shortfalls.

The other misconception is that the Demonstration Project is needs based. At Quinault, we too undertook an initial planning exercise to estimate our programmatic needs. The process was a useful planning tool, but an unrealistic political and fiscal objective given the Federal budget constraints. What became the concern during our planning and negotiation was what will it take to provide a minimum level of satisfactory service and can we do it better than the existing BIA and "638 Contracting" process. This to us was a responsible and reasonable approach to our Self-Governance Project. The Demonstration Project, however, is clearly not founded on needs based budgets.

In conclusion, at Quinault we will build our project incrementally from the foundations we have established. We want to test our beliefs, new service delivery mechanisms, and more cost effective operations before permanent legislation is shaped or before we cross the bridge to "New Federalism". We do not want to be overwhelmed by something which we do not have the opportunity to shape or test. We believe the Self-Governance Project is worth the risks, but it also requires careful and critical examination before Congress and Tribes embrace it as a long term alternative.

As always, we appreciate the opportunity to present our views to the House Interior and Insular Affairs Committee. And, we appreciate your support in authorization of Title III and your consideration of H.R. 3394 to authorize the extension of the Tribal Self-Governance Demonstration Project.

Mr. RICHARDSON. Honorable Henry Cagey, Chairman of the Lummi Indian Nation. Welcome.

Mr. CAGEY. Yes. Thank you, Mr. Chairman, Mr. Campbell. My name is pronounced "kag-e." I am new to some of the areas in Indian affairs. But I would like to say I appreciate the opportunity to testify before this committee on behalf of the Lummi Nation.

We support the provisions of H.R. 3394 to extend the authorization of the Self-Governance Demonstration Project and expand the number of participating tribes to 30. As one of the original self-governance tribes, entering our second year of implementation of our Compact of Self-Governance, I am pleased to report that this empowerment for our Tribal Council to make the budgetary and program priority decisions have been a positive development for our people. Finally, we have been given an opportunity to manage our own affairs and best address our local needs.

I firmly believe the Self-Governance Demonstration Project represents the future for tribes and Indian affairs. And, as the Project expands to other agencies and departments, tribes in the United States will improve their government-to-government relationships.

I would like to focus my remarks right now on the need to amend the Title III legislation to include all BIA education programs in the Self Demonstration Project. There is no good reason why Indian education should not be excluded if we are truly to test this experiment in all BIA programs.

Currently, the Lummi Nation operates a tribal school for our children and has the Northwest Indian College, a tribally con-

trolled community college on our reservation. We manage over 53 grants and contracts related to education, each with their own rules and regulations. Our goal is to consolidate education programs on the reservation under comprehensive management. Our Nation is committed to education designed to meet the needs of the Lummi Nation.

One of the goals of the Lummi Nation is to, basically, establish a community family-centered education system that incorporates Lummi culture throughout the foundation of our education entities and to create a challenging and positive learning environment that will allow our Lummi children to reach their own potential.

Consistently Indian education policies of the Federal Government have denied, destructed, fragmented, and alienated the education of our Indian peoples. If education were included in the Self Demonstration Project, education programs could be consolidated, centralized and better managed. Our simple structure would avoid duplication of effort, resulting in more effective and efficient education for our children.

The need for a comprehensive culturally relevant approach. BIA education programs in the Demonstration Project will allow us to create an education system at Lummi that will meet the needs and realities of our situation. Education is essential in development of our future.

As stated in my full testimony, all things are connected. But, without being able to resolve our education problems, a chain reaction will result. Examples would be an unskilled labor force, increased juvenile and adult crime, spiraling public assistance and dependency, weakening of the family unit, reduction of family pride and self-esteem, below poverty status and existence, overutilization of our natural resources as they exist today. We want to break these cycles of poverty on the reservation. Self-governance allows us to manage comprehensively. The Lummi Nation can design programs to meet our unique local circumstances and effectively addressing problems.

We appreciate your support on this historic initiative and urge the passage of H.R. 3394. Thank you.

Mr. RICHARDSON. Thank you very much.

[The statement of Mr. Cagey follows:]

TESTIMONY OF HENRY CAGEY, CHAIRMAN OF THE LUMMI INDIAN NATION

I am Henry Cagey, Chairman of the Lummi Indian Nation. Mr. Chairman and Members of the Committee, I am pleased to testify today on this historic initiative, "The Tribal Self-Governance Demonstration Project" and the extension authorization legislation, H.R. 3394. The Lummi Nation entered into the Project with high expectations and view this initiative as one of the most important events in modern Indian Affairs legislation. The Lummi Nation has participated in the Project since it's inception in October 1987 when Larry Kinley, then Tribal Chairman, presented testimony before the House Interior Appropriations Subcommittee regarding problems and solutions in the Tribal-Federal Relationship. We entered into Phase I of the Project for legal and budgetary research, internal Tribal government planning and organizational preparation in March of 1988. We began Phase II, the Compact Negotiations, in April 1990 and completed these negotiations in late June, 1990 with a signed Fiscal Year 1991 Compact of Self-Governance and Annual Funding Agreement. Phase III, the actual implementation of the Demonstration Project, began with the new Fiscal Year our October 1, 1990. The second year of Compact Negotiations for an Annual Funding Agreement were initiated in April of 1991 and were completed in June of 1991 for Fiscal Year 1992. As of last Tuesday, October 1, we

have entered our second year of implementation. These planning, negotiation and implementation years have been an adventuresome, exciting, and time-consuming learning experience for the Lummi Nation.

The Lummi Indian Nation is located in the Northwestern corner of the Continental United States, approximately 50 miles South of Vancouver, British Columbia. We have a Tribal enrollment of slightly over 3000 members. We are one of the 42 Tribes in the BIA Portland Area Office, and one of 12 Tribes in the BIA Puget Sound Agency. Our Multi-Tribe/Agency situation was one of the main reasons Lummi Nation chose to participate in the Project.

WHY LUMMI CHOSE TO PARTICIPATE IN THE SELF-GOVERNANCE DEMONSTRATION PROJECT

In the mid-1980's the Nation had tried to contract under P.L. 93-638 various functions from the BIA Puget Sound Agency. We were denied contracts as the Agency Superintendent determined those functions not contractible because only a limited number of agency personnel perform functions for the 12 Tribes. We were able to show, in the instance of law enforcement criminal investigation, that the Agency investigators weren't providing services to Tribes according to documented need, but rather due to geographical convenience. We were however, unable to change this obviously unfair situation. This is but one example of our frustrations with an unresponsive bureaucracy. Self-Governance is our opportunity to manage our own affairs and set our own service priorities, rather than continue to depend on an unresponsive bureaucracy. Tribal Governments, through their participation in the Self-Governance Demonstration Project, have entered a process that will allow the Tribes to regain control and to exercise the authority to govern ourselves free of the BIA domination.

Phase I—Planning

The Lummi Self-Governance office formulated a comprehensive internal planning process that included Community participation, in the following areas:

1. Constitution Revision
2. Comprehensive Needs Assessment of:
a. The Tribal Government
b. All Tribal Programs
c. The Tribal Community
3. Internal Reorganization
4. Legal Research
5. Budgetary Data Research:
a. Internally—Tribal
b. Externally—BIA
6. Communications, Public Relations, and Education

Activities were conducted during the planning phase to ensure community participation; six community meetings were held not only to inform Tribal members of the Project but to also to receive feedback and input on the programs and services the Tribal Government was currently providing. Several public hearings and meetings were held on the new Tribal budget ordinance, the Constitution Revision, and program operations. Interviews were conducted with a scientific random sample of the Tribal population that included youth of 15 years and older. An eleven page questionnaire was completed by this representative sample on what the community wants and needs. Through this information gathering and analysis process, the social, political, cultural, and economic needs of the community and the Tribal Government were clearly identified.

Phase II—Negotiations

Prior to the initial negotiations, Lummi Department Directors were required to review their programs and to specifically describe program goals, obstacles, and costs relative to attaining those program goals. Based on this review, programs were developed for three funding levels—current, minimal, and ideal. This program and budget information was used as guidance during the negotiation phase by Tribal negotiators to determine which BIA programs that the Lummi Nation could assume at identified funding levels.

Phase III—Implementation

Through the planning phase, we critically reviewed existing conditions in our Tribal community and Tribal government. New organizational structures and service delivery options were developed for a more comprehensive, Tribally-determined approach for our government. Tribal needs and priorities were determined based upon the direct input of the Tribal community members. To ensure fiscal account-

ability, a Budget Ordinance was developed and implemented that requires a balanced Tribal budget and provides for community participation in the planning and development of **ALL** Tribal budgets and programs, not simply those operated by the Bureau of Indian Affairs. To accomplish this task, the entire Tribal administrative structure had to be redesigned to support the additional responsibilities associated with these commitments and new Self-Governance responsibilities.

INNOVATIVE, EFFICIENT TRIBAL OPERATIONS AND SYSTEMS WILL DETERMINE THE SUCCESS OF THE PROJECT

Tribes need the time and the opportunity to demonstrate a more efficient and cost-effective Tribal government including a streamlined relationship with the Federal government. The Self-Determination contract and grant services were modeled after the BIA service delivery system. Although, these systems obviously have not been effective, Tribal staff under Self-Governance still tend to maintain the old Bureau/Tribal bureaucracy and are hesitant to change. We are promoting creative innovations for both efficiency and effectiveness objectives, but human nature dictates that time, testing and experience will be required to create a responsive Tribal government. Time also is needed to allow us to evaluate the effects of change in our Tribal communities and to prove that there is a better way to do business.

The Self-Governance Compacts and Annual Funding Agreements also create opportunities for streamlining and improving our relationship to the Federal system. Consolidation of programs, waiver of Federal regulations replaced by more meaningful Tribal guidance rules, access to government travel rates and GSA authorizations for State and local units of government, and development of creative communications mechanism are all possible. Whether the Federal bureaucracy will be responsible to creativity and recognize the unique Tribal status in the Federal system remains to be tested But an opportunity for change and improvements exists.

We envision Tribes developing new government operation and service delivery models according to their unique reservation circumstances. Tribes will adopt existing technologies and methods according to their capabilities. And future forums on Tribal government may become the showplace for new ideas and the opportunity to exchange experiences for Tribal change. It all becomes possible through opportunity, time, and the competitive Tribal spirit.

LUMMI NATION NEEDS TO STABILIZE TRIBAL GOVERNMENT AND HOPES TO ESTABLISH A MEANINGFUL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH THE UNITED STATES

A key factor for the effective implementation of the Project for the Lummi Nation is stabilizing the Tribal Government Structure. This fundamental task will require the establishment of a funding base and the revision of our Tribal Constitution. A major objective for Lummi will be to create an innovative approach to the indirect funding of the Tribal government. A stable Tribal budget and revised constitution will create the opportunities to address our identified needs and emerging challenges.

We had hoped for a simple one-time negotiation for programs and dollars needing only to resolve annually Congressional appropriations increases or decreases. Currently, we must go through the BIA Budget Justification "Green Book" line-by-line to renegotiate the original programs we assumed. We currently foresee this funding instability to continue until permanent Self-Governance legislation is enacted in 1995.

As clearly stated in our joint written testimony presented to the Committee on behalf of Lummi, Jamestown S'Klallam, Hoopa, and Quinault Tribes; "We believe there will always be a need for the Bureau of Indian Affairs... ." We want the opportunity to change the Tribe-BIA relationship, so that the bureaucracy will not intrude and unduly effect our day to day governmental functions. We need the Bureau to protect the trust responsibilities of the United States including the protection and resolution of our many inherent land base issues. The new BIA-Tribal relations should be established on logical principles of Tribal needs and BIA capabilities to maintain stable Tribal governments.

The Lummi Nation has always envisioned this project as a major step towards restablishing the government-to-government relationship. We plan to demonstrate the ability to better identify, prioritize and utilize the available resources. The Self-Governance process has been both challenging and frustrating. We will make mistakes, but they will be our mistakes from which we will learn and improve. This Project is an opportunity for our Tribe to make some positive changes in our community.

INDIAN HEALTH SERVICE SHOULD PREPARE FOR SELF-GOVERNANCE

On October 27, 1987 the Lummi Nation presented testimony before the House Interior Appropriations Subcommittee regarding, "Problems and Solutions in the Tribal-Federal Relationship." In that testimony was the following statement,

> "The Federal bureaucracy, particularly the BIA and IHS, but also other Federal Agencies, impede and frustrate Tribal economic and social growth as currently structured. . . . The IHS system, buried in the Health and Human Services Department, offers field services on thinly stretched budgets while an unidentified management mass gobbles up resources and an unaccessible bureaucratic layer makes policy."

The Lummi Nation supports an amendment to begin the planning stages to extend the Self-Governance Demonstration Project to the Indian Health Service. The planning activities need to examine internal IHS operations and service functions. How are the budgets established? What are the funding mechanisms and processes? How would IHS respond if they were to be included as part of the Self-Governance Demonstration Project?

The same Self-Governance principles that apply to the BIA apply to the IHS; decision-making needs to occur at the local level to ensure community input and fiscal accountability. At the present time, the Lummi Nation is concerned with the quality of care being provided, the lack of planning, lack of consultation on the budget process, the limited amount of resources being channeled to the Tribes, the amount of resources being retained by the IHS bureaucracy, and the arbitrary IHS policy-setting process. Hopefully, an IHS Self-Governance Demonstration Project will begin to resolve these Tribal concerns.

BIA INDIAN EDUCATION SHOULD NOT BE EXEMPT FROM SELF-GOVERNANCE

On April 3, 1990 the Lummi Indian Business Council passed Resolution No. 90-20 which states,

> "A community/family centered educational system which incorporates the Lummi cultural throughout will be the foundation for all educational entities. Tribal Council members, elders, community and family members, staff and students will be involved in creating a challenging and positive learning environment that will allow all Lummi Children to reach their potential."

Indian education policies of the Federal Government have denied, disrupted, fragmented and alienated the education of the Indian people.

Through the Self-Governance Demonstration Project and the inclusion of other Department programs, services, activities, and functions a Comprehensive and Consolidated Education Department could be established that would provide coordination and direction for all members of the Lummi Nation. Although the Lummi Nation was specifically mentioned in the Indian Education Amendment of 1988 to establish a Tribal department of Education, this objective has yet to be realized.

By the consolidation of education programs from Federal resources, the Lummi Nation expects the education of Lummi members could be better managed, a simplified structure would avoid the duplication of efforts and provide for a more effective and efficient education of our children. It is clearly evident that the present structure does not meet the needs of the Lummi Community. Each with separate rules, regulations, guidelines and reporting requirements creates duplicative efforts and redundant systems. Because of these specific requirements for each funding source it becomes difficult to centralize and coordinate activities.

The Lummi Nation education program represents the broad spectrum of Federal assistance mechanisms in education and exemplifies the need to consolidate and coordinate programs. Presently, there are 700 Lummi School age children: Headstart (92 students); Tribal School (126 Students); Middle College High School (30 students). The funding for these entities comes from 12 separate funding entities. Each with separate rules, regulations, and reporting requirements. At the Northwest Indian College, a Tribally-Controlled Community College at Lummi, there were 730 FTE's in 1991 with budgets from 41 different funding sources, each with separate rules, regulations, guidelines and reporting requirements. The inclusion of BIA education programs into Self-Governance would be a major step in the consolidation of Lummi education programs.

Even though the education of Lummi students has improved in recent years, the tardiness, absenteeism and dropout ratios for Indian Children are disproportionately high when compared to the non-Indian school population. The Lummi Indian Business Council recognized the need for a comprehensive, culturally relevant approach to education for Lummi people from cradle to the grave. The Lummi youth are edu-

cationally at risk for a number of reasons, but a major cause is both the public school system and the Tribal Schools are based upon non-Indian models with little or no attention given to Indian ways, history, language, heritage or civics. Thus, Resolution No. 90-20 was passed for the adoption of the goals and philosophy to serve as the foundation for one Lummi Education Plan. The BIA Indian education programs should be incorporated into the Self-Governance Demonstration Project to allow us the opportunity to create an educational system at Lummi that meets our peoples needs and realities.

SUMMARY

The Lummi Nation has looked at our problems and now have designed the solutions as we see best. However, we still do not have the control and the authority needed to implement these solutions. The Self-Governance Demonstration Project has provided a door to opportunity but, to take full advantage of this opportunity, tribes need to be able to make the decisions to implement them with the least amount of constraints and the maximum amount of flexibility to demonstrate the benefits and pitfalls of this Project.

The Lummi Nation believes strongly in the reality that all things are connected such as education is integral to health, health is necessary for economic development, and development requires a stable Tribal government. The Self-Governance Demonstration Project has empowered the Lummi Nation to begin addressing its issues comprehensively. Inclusion of other Federal programs will enhance this management approach.

The Lummi Nation encourages enactment of H.R. 3394 to extend the Title III authorization with amendments added to include all BIA programs, extend the Project to all Agencies in the Interior Department, and require IHS to begin Self-Governance Demonstration Project planning phase. I would like to thank the House Committee on Interior and Insular Affairs for this opportunity to provide testimony. We appreciate the Committee's support of the Tribal Self-Governance Demonstration Project.

Mr. RICHARDSON. The Honorable William Ron Allen, Chairman of the Jamestown S'Klallam Tribe. How is that? Is that all right.

Mr. ALLEN. Good. As good as—usually the l's are a tongue twister, Mr. Chairman.

My name is Ron Allen. I am the Chairman and the Executive Director for the Jamestown S'Klallam Tribe. I do also thank you for the opportunity to testify before this committee regarding the Self-Governance Demonstration Project.

As you know, and as people like President DeLaCruz has stated many times over, this is not a new idea. It is an old idea. It is innate with Indian tribes that we are self-governing people. We are self-governing nations and that is the basis so that we have treaties and special executive order relationships with the United States Government.

And through the path that has led us to today, the tribes have been consistently frustrated with the way that the process has taken to provide services to our communities. And we feel that this is a new way, a new approach that is different from the old system of modifying bureaucracies to provide better services. And we think that it is more consistent with that government-to-government relationship.

What we would like to point out in behalf of my tribe is that across the Nation we have all sizes of tribes. We have the Navajo and Cherokees, and then we have the small tribes like mine. My tribe is a very small tribe with only 9 acres and with only 250 people. So we exhibit, or represent a tribe that is small. Yet we point out that we still have the same governmental responsibilities. We have the same duties and obligations of any other nation. It is just that we are smaller in nature.

And what we have argued for in behalf of our participation in this Project is that the majority of tribes in the United States are small, and that we need to prove that this Project, and the very concept of this Project, can be conducted with a small tribe like mine, so that as the Project moves forward to its permanent status that we can show that it can responsibly take X number of dollars that it negotiates and address them as efficiently and as effectively as any other nation. And we are very confident that that will be proved and borne out throughout this Project.

We have many successes. We are very excited about the successes already in just the short time frame the Project has been conducted this year. Even though we had a real tough start in the first year of this implementation, we can show all kinds of examples in the areas of education and housing and planning that we have already shown some successes, and that is because of the attitude that we have regarding the Project.

We would like to point out that the Project has, because it is so unique it has a lot of needs, and it is going to take a great deal of creativity and innovation in behalf of both the tribal leadership and our staff as well as the bureaucracy. And because of that we refer to the fact that Congress and the administration needs to recognize that there are implementation costs to conduct the Project. If we are going to look for a way to redefine the Bureau, then we need to look for those ways that are going to redefine, reshape the role of the bureaucracy.

And I would point out that we are not talking about the elimination of the bureaucracy. We are talking about a redefinition of the role and a reshaping of their structure to accompany the relationships between the tribes and the United States.

We would like to see the Project move forward, and we are very supportive of both the Senate and the House bills. That it be structured, be framed in a way that provides us the greatest amount of flexibility, the greatest amount of tribal control. We think that that is important because it will show to Congress that if Congress allocates X number of dollars to the tribes that we will manage those monies more efficiently, more effectively, and accountably and responsibly to Congress and to our people.

And that there are particular conditions that we think are important that are relevant to tribes that aren't relative to State and local entities, and some of those conditions are identified in OMB regulations and exceptions that we are asking for.

We are also supportive of the notion of keeping it controlled as far as the Project goes. We think that 30 tribes probably is a good number to conduct the project in, and the reason is to keep it consistent, keep it controlled and move forward cautiously and not too many cooks stirring the soup. We think that we will be able to identify the kinds of conditions that are important for the project, the kinds of conditions that are going to be important for future legislation. What are those conditions that protect treaty rights, trust responsibilities, government-to-government relationships?

And we know that by the time they come up with permanent legislation that the tribes across the country will be very aware and be very observant of the kinds of conditions that we are proposing.

What are our goals? Our goals are simply to strengthen and stabilize sovereignty—strengthen and enhance the government-to-government relationship and show that it can be conducted effectively. We believe in protection of our treaty and trust relationships and those obligations, and they will be addressed.

It is going to enable us to pursue all of our objectives at the tribal level, culturally, religiously, economically. That we will be able to manage our own affairs and establish our own priorities. We will be able to learn from our own mistakes. And that we will be able to try to help heal old wounds.

We think that there has always been an adversarial relationship between the bureaucracy and the tribal governments, and that we need to form partnerships. We really believe in that theme, and we believe it can work. But we have to change our attitudes from the top down, and it has to be done in the manner that everybody is on board and working in the same direction; that positive attitude that education and communication is very important.

People ask us, you know, what is the down side of this Project. In our judgment the down side simply is uncertainty, lack of understanding, and a fear of change. And we believe that we can cross those bridges and cross those thresholds in a way that we will be successful, and we believe in our ability to do it.

I thank you very much for this opportunity, Mr. Chairman, and I am prepared for your questions, if necessary.

Mr. RICHARDSON. Thank you.

[The statement of Mr. Allen follows:]

TESTIMONY OF W. RON ALLEN, CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

I am William Ron Allen, Chairman of the Jamestown S'Klallam Tribe. Our Tribe was one of the first original ten Tribes selected to participate in the Self-Governance Demonstration Project authorized under P.L. 100-472, Title III. We are now one of seven Tribes in the nation to have a Self-Governance Compact and Annual Funding Agreement with the Department of the Interior. We appreciate the opportunity to testify before this Committee on our experiences with the Project and to support H.R. 3394, extending authorization for Title III of P.L. 100-472.

In Fiscal Year 1988, The Jamestown S'Klallam Tribe received its first Self-Governance Demonstration Project grant to conduct legal and budgetary research and to begin internal planning in order to determine our tribe capabilities in implementing such a Project. The Tribe successfully completed a two-year planning period, then joined the Quinault and Lummi Nations and Hoopa Valley Tribe in establishing a framework for the negotiated transfer of BIA resources to the Tribe(s). Negotiations for a Fiscal Year 1991 Self-Governance Compact and Annual Funding Agreement were completed on June 30, 1990, and the Tribe has just concluded its first year of implementation. On June 27, 1991 an Annual Funding Agreement was negotiated and signed for FY92, and the Tribe anticipates continued successes and improvement as the Project progresses. Our experiences to-date have had both positive and negative aspects. As we move forward, however, we anticipate a process that will improve as the Tribes continue to share experiences in implementing the Compacts of Self-Governance and as problems and obstacles are addressed and resolved.

CONSIDERATION OF SMALL TRIBES IN THE NEGOTIATION PROCESS

The Jamestown S'Klallam Tribe achieved federal recognition on February 10, 1981 and has 240 enrolled tribal members. With a 2.12-acre reservation and a total landbase of 18 acres, we are the smallest and "youngest" Tribe to participate in the Self-Governance Demonstration Project. One of the Tribe's objectives has been to demonstrate that Self-Governance can work for small Tribes and may prove to be as critical to our futures as it may be for those larger Tribes involved. With small operations and limited resources, the Jamestown S'Klallam Tribe needs the flexibility to consolidate programs and services, creatively using available resources to fulfill tribal governmental responsibilities to our tribal people. We desire to exhibit to Con-

gress, Federal Agencies, and other small Indian Tribes that the Jamestown S'Klallam Tribe can effectively manage its governmental affairs with the same integrity and sense of responsibility as large Tribes.

One advantage to our smaller size has been a greater capacity for taking over the management and allocation of resources under Self-Governance. The reason has been two-fold: 1) a smaller-scale operation has allowed greater ease with which the Tribe could administratively adapt to such change; and 2) communications with and education for our Tribal Council, staff and community has been accomplished in a more thorough and efficient manner than has been experienced by other Self-Governance Tribes, partially due to our small size. Our ability to effectively communicate with a large percentage of our total membership has allowed us to avoid many pitfalls and has virtually eliminated local rumors of termination and fears brought on by miscommunication.

A disadvantage was experienced, however, during the negotiations process for FY91. Allocations were based on theoretical distribution of "eligible" BIA funds by a mixture of population, acreage and Tribe formulas. For example, in FY91 negotiations, the Jamestown S'Klallam Tribe received $2,222 in additional BIA Social Services; for BIA Area Trust Services--$140; and for BIA Area Adult Vocational Training—$162. The Tribe believes the Project can be successful for smaller Tribes only if allocation formulas are designed to ensure that Tribal administrative responsibilities can be sufficiently met when resources are transferred from the BIA to the Tribe.

During FY92 negotiations, a reasonable method was introduced for determining Tribal shares of BIA Central Office funds that would be beneficial to smaller Tribes. This method could be used as a framework for future negotiations with existing Compact Tribes as well as new Tribes entering negotiations. A base was established for all Tribes, with additional or existing allocation formulas being added to the base to meet the more costly administrative needs of larger Tribes. In using this method, smaller Tribes were provided a protected base to carry out the program functions and responsibilities, while still allowing larger Tribes the necessary funds to carry out their more complex responsibilities. Size does not minimize nor diminish the Tribe's responsibilities or the complexities of administering new programs and services negotiated into the Annual Funding Agreement(s). This issue will continue to remain a concern to our Tribe unless adequately addressed as the Project continues.

SUCCESSES IN IMPLEMENTING THE SELF-GOVERNANCE PROJECT

The Self-Governance Demonstration Project allows Tribes to consolidate, reprogram or redesign Bureau programs to meet more unique, local situations. In implementing the Project, the Jamestown S'Klallam Tribal Council has had the opportunity to become more flexible with greater opportunity for creative responses to specific tribal needs.

For example, the Tribal Council approved additional funds to be reprogrammed into the Tribe's Housing Improvement Program. Construction of a tribal member's home can now be completed this fiscal year. A modest economic development program has been established with the hiring of one economic planner to assist the Tribe in enhancing its business opportunities and furthering its self-sufficiency goals. The Tribe is now able to incorporate cultural restoration, preservation, and enhancement activities into its Social Services Program that were not previously allowed under the BIA. The Higher Vocational, and Adult Education Programs have been consolidated to more effectively use these funds to meet the true needs of our tribal people. We have also been able to more efficiently upgrade equipment to improve tribal operations as there is less bureaucratic obstruction due to lack of expertise in this area or adequate processing procedures.

Given the opportunity of budgetary flexibility, our Tribal government can creatively deliver services in a more efficient and effective manner than the Federal bureaucracy. We envision a strong, stable, and more responsive government that can promote greater social, economic, and political self-sufficiency for our Tribe through the Self-Governance Demonstration Project.

ONGOING COSTS OF IMPLEMENTING THE PROJECT

There are numerous costs in implementing an innovative and overwhelming Project such as Self-Governance—beyond those associated with new projects. The participating Tribes have taken the responsibility to examine and analyze the differences in the Self-Governance approach as opposed to the P.L. 93-638 contracting system. The Tribes now have the additional responsibilities of internal monitoring,

and on-going planning. In addition, consistent communication with the Tribal Council and community regarding the Project's impact on Tribal programs and services is vital to the Project's success. All these activities are burdensome and time-consuming, yet very necessary responsibilities. We also expect to continue to shoulder the burden of exploring new ways in determining Tribal shares of BIA activities, programs, functions, and services.

The first Tribes to enter into Compacts are paving the way for the Project to succeed. They should not have to bear the costs of streamlining and improving the use of federal dollars as intended by Congress through Title III with existing or negotiated program funds. These special project functions must be supported by the Federal government to encourage a system to be developed that can help facilitate permanent legislation and useful implementation procedures.

Other implementation costs also exist. The Self-Governance Tribes must continue to help facilitate a cooperative working spirit and attitude with the BIA. This is particularly true at the Area and Agency levels but also is needed at the Central Office level where policy is primarily developed. Issues that the Tribes will be responsible for include: a) recommendations for the redesign of Bureau programs and operations to accommodate Self-Governance Tribes without adversely impacting other Tribes; b) research and development of formulas to allow Tribes to receive their fair share of budget line items designed for Bureau nation-wide use that are not included in negotiated funds by the Tribes; and c) research of fair allocation formulas for competitive grants, technical assistance, or unique one-time only services which should be eligible for Tribal consideration and negotiated inclusion in the Annual Funding Agreement(s).

The initial Tribes in such a demonstration project should be recognized for these endeavors with adequate resources to carry out the objectives. The Jamestown S'Klallam Tribe believes if these studies, analysis, and the development of innovative approaches were not conducted by the Tribes themselves, this historic initiative would not reach its fullest potential.

SELF-GOVERNANCE PROJECT FLEXIBILITY WILL REQUIRE CLARIFICATION AND EXPANSION

Title III provisions authorize the transfer of BIA "programs, services, functions, and activities" to the Tribes with some exceptions. This simple concept, unfortunately, becomes vulnerable to BIA interpretations and exclusions. The Tribe asks that the Committee clearly reaffirm the legislative intent that all BIA operations are eligible for negotiated transfer so there is no room for interpretation that might have a negative impact on the Project's success.

The Tribes should be allowed every opportunity, in their unique circumstances, to creatively and innovatively provide programs and services and to develop their economies. While the Tribes have proceeded with tribally-specific priorities, there may be potential obstacles ahead if the BIA can interpret Title III language loosely. BIA intervention and obstructive capabilities should be eliminated, leaving the Bureau with only those responsibilities and activities clearly outlined in the Self-Governance Compacts.

An area in which the Tribe requests Congressional assistance is in establishing appropriate authorized financial/cost recovery conditions. We are currently awaiting a formal response from OMB regarding specific waivers from OMB Circular A-87 that guide the allowable cost recovery of expenditures. Unfortunately, these regulations are primarily designed for state and local governments, not Tribes. Currently there is an effort to modify these conditions in the regulations being developed for the Indian Self-Determination Act as amended, but these requests by the Tribes are not receiving favorable or supportive assistance from OMB or the Federal Departments. This Project is an opportunity for appropriate and fair financial expenditure conditions for Tribes to be easily incorporated into a funding mechanism. The Tribe's concern is that OMB respond to these requests within a reasonable timeframe.

Another issue of importance is the need to eliminate restrictive conditions or laws that obstruct the Project from being administered consistent with its legislative intent. If the Project cannot be administered freely, then it cannot be tested in its best political and regulatory conditions or prove that Tribe(s) have the capability to use these funds responsibly. One example is the BIA restrictions on the use of Housing Improvement Program (HIP) funds. Currently, these funds can only be used for their legislated purpose. These conditions can and do obstruct the Tribe from using the funds in creative approaches that would still address the housing needs and purpose of that particular program but in a more tribally-specific manner.

Indirect cost authorization for Indian organization subcontractors also will need to be addressed. The Jamestown S'Klallam Tribe believes that under the Self-Gov-

ernance Demonstration Project, Tribal governments should have primacy in distribution of all federal monies appropriated for Tribal governmental operations and programs. In a specific example, the Northwest Indian Fisheries Commission (NWIFC) serves the collective interests of the twenty Western Washington State Tribes, and the Point-No-Point Treaty Council (PNPTC) serves the more targeted interests of four of the twenty Tribes to achieve fisheries-related management efficiencies as contracted through the BIA. As a matter of principle, the Jamestown, Quinault and Lummi Tribes incorporated our proportionate shares of NWIFC funds in our FY91 and FY92 Compacts of Self-Governance. It was with clear intent to subcontract back to the NWIFC for the same services and to PNPTC for a portion of services as these functions are carried out in behalf of the Jamestown S'Klallam Tribe. These subcontracts should be considered part of our funding base, and our indirect cost rate should apply. There are several new cost allowances that will need to be acknowledged and accepted by the Federal government to assist us in testing this next threshold of "Government-to-Government" relations with the United States. The Tribes need to be assured that indirect costs of organizations administering portions of our Self-Governance funds will be authorized as legitimate expenditures of our own indirect costs.

SUPPORT OF H.R. 3394; THE PROJECT SHOULD MOVE FORWARD WITH CONSISTENT AND CAUTIOUS CONDITIONS

Before expansion of the Demonstration Project, documented results should be thoroughly analyzed. The Jamestown S'Klallam Tribe believes this Project should continue to evolve in experimental stages before it is expanded into permanent legislation, other federal agencies, and more than thirty participant Tribes. This experiment will take time, both at the Tribal level and the Federal level. Thirty tribes is an acceptable number to be allowed to participate in the Project; any more would be detrimental, not allowing the experiment to be fully tested. We must proceed steadily and deliberately with planned goals and objectives for this historic initiative. The Project must be conducted under a controlled set of conditions to address the problems and needs in both administrative and legislative areas in order to prepare for permanent law authorizing this approach.

Another implementation objective will be the reorganizing and restructuring of the BIA when the Project becomes permanent and a large number of Tribes choose to negotiate Compacts of Self-Governance. The transition and reallocation of federal funds appropriated will need to be carefully considered and planned.

One of the primary reasons this demonstration should be restricted to a maximum of thirty Tribes is to maintain a manageable framework of participating Tribes necessary to conduct a demonstration project. All participating Tribes possess unique circumstances and thirty would be an appropriate cross-section of Tribes throughout the country to allow effective evaluations of the Project to occur. If the number of participating Tribes is expanded to a larger number, it could create an unmanageable Project and unnecessary instability and confusion in the BIA. This situation could feasibly degenerate to direct inter-Tribal conflicts.

To establish a solid administrative foundation capable of sustaining this Project, we need to continue on a cautious path. A structure must be established that will not turn into a counter-productive bureaucracy. This structure must be able to adapt and meet the growing needs of all the Self-Governance Tribes; therefore, to increase the number at this time beyond thirty would minimize the ability to meet those needs.

An additional concern is the reduction and redesign of the Bureau of Indian Affairs. If Self-Governance does become a permanent reality, it will require extensive planning to redesign the Bureau's role in Indian affairs without adversely affecting those Tribes that choose to remain under the P.L. 93-638 contracting process or receive direct services from the BIA. We believe the Project can still successfully move forward by adding 10 tribes to the Project, but Tribes and the federal government must be able to fulfill the intents and purposes of the Project.

RECOMMENDATIONS

The Jamestown S'Klallam Tribe supports H.R. 3394. From our tribal perspective, the bill is very important to the success of the Project. As we continue to implement our Self-Governance Compact and Annual Funding Agreement, we have come to understand the magnitude of necessary change. The Project will take time to become completely successful, and the extension of the Project for three more years will provide that time. Not only will administrative and implementation issues need to

be resolved, but an extended timeframe will be necessary to design appropriate legislation to allow the Project to become a permanent opportunity.

We would also appreciate consideration of special technical and legislative conditions that would establish clear recognition of the special circumstances of Indian Nations as governmental entities that are not the same as states and local governments (i.e., OMB Circular A-87 exceptions). Our Tribe anticipates that OMB and perhaps the Office of Inspector General may not accept that Tribes simply do not have adequate resources or revenue bases as do state and local governments. Many of the existing standards not only increase the difficulty of the Tribes to use federal funds, but cause undue financial hardships.

There is a continuing and increasing need for nation-wide education and communication about the Project, for the BIA as well as Tribes. Those in Indian Country will need to be educated on the Self-Governance Project's purposes, opportunities, strengths, and weaknesses to ensure that Tribes fully understand their options when future permanent legislation is considered. Confronting the rumors and misconceptions about the Self-Governance Project in Indian Country has become a major task and responsibility. With the establishment of the Office of Self-Governance and through the continued opportunities through the Self-Governance Demonstration Education and Communication Project, I believe we can keep Indian Country well informed of this Demonstration Project, but it will take an extensive commitment of time and resources.

In conclusion, I would like to urge this Committee to remain actively involved in the Self-Governance Demonstration Project. We believe this bill is a positive initiative for the obvious reasons stated in our testimony and urge its passage during the 102nd Congress. We hope more restrictive conditions are not entertained in the legislation. In fact, more liberal conditions are needed to demonstrate Congressional trust in Tribes as responsible governments. The Tribal leadership will have to work diligently with the Congress and the Administration to prove unquestionably that we are capable of responsibly and more effectively using federal funds, replacing the federal Indian operations that have been institutionalized over the last 150 years. We appreciate the commitment and full support the Committee has provided us and this Project, and we look forward to continuing our work with you.

Mr. RICHARDSON. Let me turn to my colleague from Colorado, if he has any questions.

Mr. CAMPBELL. You mentioned in your testimony, Joe, there are some apparently mid-level management people in the Bureau that are really opposed to this concept but that the heads of the Bureau are supportive of it. Do you know specific instances or specific things that we can relate that to, or is there just kind of a mood out there?

Mr. DELACRUZ. That was very true in our first year, 1991, in negotiations, almost throughout the lower echelons within the Bureau structure that it becomes a combination of people in the Bureau and tribes that oppose this project, and mostly it relates to misinformation about the project. In fact, we are dealing with one right now on indirect cost shortfalls.

The Bureau has always had shortfalls in indirect costs since we went into 638 contracting. This year they have a shortfall, and in Portland Area some of the tribes and the Bureau people are blaming it on self-governance. It has nothing to do with self-governance. We basically have the same levels of indirect costs that we had under 638. And it is that type of misinformation that basically I think sets back the Project.

We requested and was funded for education projects. We have—the four tribes have taken a lead in having symposiums on self-governance. In fact, we had one in Portland three weeks ago that was supposed the area, all the area staff and superintendents. But yet you still have this type of misinformation coming out.

Mr. CAMPBELL. Probably a little bit related to job insecurity too, I imagine.

Mr. DELACRUZ. Well, that is definitely a problem. Yes.

Mr. CAMPBELL. Thank you. Thank you, Mr. Chairman.

Mr. RICHARDSON. Thank you. Let me ask the three of you, this I think would require a short answer.

Should the legislation H.R. 3394 include language which requires greater geographic representation and diversity among the participating Indian tribes?

Mr. DeLaCruz.

Mr. DELACRUZ. Initially, we pushed that that should happen, and I think there should be at least a tribe from every area. As I am aware now, there are about 17 tribes signed in and the legislation is asking for 30 tribes. I think it is going to be difficult to get a geographic distribution if you don't have tribes coming forth, and there is a couple of regions that I am aware of that no tribe has come forth yet.

Mr. RICHARDSON. Mr. Cagey, what is your view?

Mr. CAGEY. Our view is that, you know, there should be some type of geographic diversity with some of the areas, because there is so much misinformation on the Project that, you know, it would be wise to be looking in that direction with the Project.

Mr. RICHARDSON. Mr. Allen?

Mr. ALLEN. I would agree that you encourage it. But the most important aspect is you want tribes in who want to do the Project, who want to help contribute.

Mr. RICHARDSON. Let me turn to the issue of self-governance, the question I asked Eddie Brown, and that is can self-governance be effectively utilized by small tribes? What kind of problems does this program pose for some of the smaller tribes?

And I believe all of you here——

Mr. DELACRUZ. Are small tribes.

Mr. RICHARDSON [continuing]. Are smaller tribes. Is that accurate?

Mr. DELACRUZ. It is accurate, when I look at Indian nations across here. And I don't think it poses any different problems for a small tribe if we are looking at governance, territorial governance over our territories and stuff than it would for a large tribe. I basically don't see any difference. It is just an order of magnitude or size as far as things that you are doing.

Mr. RICHARDSON. Mr. Cagey?

Mr. CAGEY. On the size, I think, like Mr. Allen stated before, you know, we are operating under the same issues, the same regulations, the same rules whether you are a small tribe or a large tribe, and working with the government. So basically, you are doing the same things as a large tribe as a small tribe. That is about it.

Mr. RICHARDSON. Mr. Allen?

Mr. ALLEN. I would point out that with regard to small tribes embarking on the Project we have some additional obstacles and complex problems that large tribes or single agency tribes don't have, so it is going to be quite important for us to participate in this process in a manner that shows that it can be done, and that we may have to look for wards to make adjustments to allow those small tribes to have an adequate or minimum base to work from.

Mr. RICHARDSON. Let me ask my last question in terms of the tension between the funding requirements of the self-governance

tribes and the need to stabilize BIA agency funding levels for the non-participating tribes. How was this resolved? Did you get the drift of my question?

Mr. DELACRUZ. Basically, Mr. Chairman, I don't know how that is resolved. The Bureau, basically, ever since we went into the Self-Determination Act back in the 1970s, there has been various shortfalls almost in every one of the programs that tribes 638. And one of the reasons I moved my tribe forward into the Self-Governance Project was, hopefully, through this demonstration is try to at some point establish what would be the base level of funding. Because there have been shortfalls as far as the Bureau goes on its programs across the board.

I think last year I seen a study by the Senate, or by the Library of Congress showing the inadequacies of the Indian Federal budget, and I think we are faced with that regardless if it is self-governance or under the Self-Determination Act.

Mr. RICHARDSON. My colleague from Arizona, John Rhodes, has come in. We have heard these witnesses. We are on the questions. I wondered if you had any.

Mr. RHODES. Thank you, Mr. Chairman. I won't take the committee's time with any statement. It is, as you know, a bill that I have cosponsored with Chairman Miller, and I am just interested in hearing the testimony.

Thank you very much.

Mr. RICHARDSON. Thank you very much. I want to thank the three witnesses.

We will now move on to Panel III. We will proceed with the Honorable Pliney McCovey, Councilman, Hoopa Valley Indian Tribe, Hoopa, California. He will be accompanied by Danny Jordan, the Tribal Manager. And we welcome the Honorable Lloyd Powless, Councilman, Oneida Tribal Business Committee, Oneida, Wisconsin.

Gentlemen, welcome to the House Interior Committee hearing. As you know, your statements are fully inserted in the record. We would ask you to summarize, and we will start with the Honorable Pliney McCovey.

STATEMENTS OF HON. PLINEY McCOVEY, COUNCILMAN, HOOPA VALLEY INDIAN TRIBE, HOOPA, CA, ACCOMPANIED BY DANNY JORDAN, TRIBAL MANAGER; AND HON. LLOYD POWLESS, COUNCILMAN, ONEIDA TRIBAL BUSINESS COMMITTEE, ONEIDA, WI

Mr. MCCOVEY. Thank you, Mr. Chairman, members of the committee. My name is Pliney McCovey, from the Hoopa Valley Tribe in California. I would like to thank you for the opportunity to testify on H.R. 3394, the Self-Governance Demonstration Project.

The Hoopa Tribe fully supports this Project. We were one of the 10 original tribes on this Project.

For the Hoopa Tribe the Project has created new opportunities never before available to the Tribe. Past experiences between the Hoopa Tribe and the Bureau of Indian Affairs have been inconsistent, which at times created a lot of instability for our Tribe.

Passage of the Hoopa-Yurok Settlement Act paved the way for the Self-Governance Project for our Tribe. We believe that the planning grants enabled the Tribe to set the foundation for implementation of this Project, and we encourage other tribes to take this avenue.

The Tribe remains concerned, however, about the uncertainty of the future funding since we have not yet stabilized or even know what the base funding or shortfall possibilities hold for the future.

The Tribe recommends that the inclusion of IHS and other Interior Department agencies in the Project. The Hoopa Tribe volunteers to work with IHS to develop a self-governance compact model.

The Hoopa Tribe has been tremendously affected by the Bureau of Reclamation and U.S. Fish and Wildlife Service management of tribal resources. While our relationship with the BIA has improved while operating under the Self-Governance Project, we believe that the same results can be achieved with other DOI agencies as well.

The Tribe is very interested in including the roads project as eligible for tribal assumption under the Self-Governance Project.

On a broader note, we appreciate the support demonstrated by mr. Miller for addressing problems of the tribes throughout our State.

In conclusion, the Self-Governance Project has been a tribally driven project with the first tier tribes leading the way. Our Tribe has taken a can-do approach to this Project. We are very excited about this Project and we see it as a new way of doing business.

Thank you very much.

Mr. RICHARDSON. Thank you very much.

[The statement of Mr. McCovey follows:]

TESTIMONY OF PLINEY MCCOVEY, COUNCILMAN OF THE HOOPA VALLEY TRIBE OF CALIFORNIA

Good Morning, Mr. Chairman. I am Pliney McCovey, Councilman of the Hoopa Valley Tribe of California. As one of the original ten tribes to participate in the Self-Governance Demonstration Project, I am honored to be here today to testify on our experiences in the developments and implementation of Title III of P.L. 100-472. We appreciate the leadership demonstrated by this Committee, especially that of Chairman Miller and Congressman Rhodes for your support for this Project, as well as that of Chairman Yates of the House Appropriations Subcommittee on Interior and Related Agencies. We support H.R. 3394 and urge its enactment at the earliest possible date.

The Self-Governance Demonstration Project is the beginning of a new era in a partnership relationship between the United States and Indian Tribes. The concept of the Project is that tribes can assist in crafting the definition to their government-to-government relationship with the United States. Participation in the Project is optional and for those tribes that do join, each has the flexibility to assume and redesign BIA programs, services, functions and activities based on tribal priorities and needs, internal capability, political and economic considerations that were historically conducted by the BIA. For the Hoopa Tribe, the Project has created new opportunities never before available to the Tribe.

HISTORY OF HOOPA TRIBE/BIA RELATIONSHIP

Prior to passage of the Hoopa-Yurok Settlement Act in 1988, P.L. 100-580, the relationship between the Hoopa Valley Tribe and the Bureau of Indian Affairs was combative, primarily due to inconsistent and unclear interpretations of the various legal matters pertaining to the Hoopa Reservation. Since 1955, the Tribe has faced challenges from outside groups relating to Reservation lands, jurisdiction, tribal governmental stability, as well as the use of Reservation revenues for governmental purposes. The BIA made most of the resource management decisions, only some of those decisions were due to legal requirements. Most of the management decisions

were for simple convenience of the BIA decision makers, and still others were intended to influence and interfere in the internal activities of the Hoopa Tribe.

The control over Hoopa Tribal affairs was implemented through the use of BIA "discretionary" judgements to which only the BIA had control over their interpretations and scope. In 1985, the Tribe estimated that for almost every management decision involving Reservation resources and assets; at least 32 federal employees spent 25% or more of their time; at least 15 lawyers were involved; there were more that 16 separate, yet related, lawsuits pertaining to Reservation rights and jurisdiction filed between 1963 and 1985; and almost every management decisions was made at the Central Office and Justice Department levels. Although most of the actions of the BIA were *administrative* in nature and not required by any court order, the Tribe contended that the BIA could have had a more cooperative working relationship with the Tribe. Finally, after becoming frustrated with the endless Reservation problems in 1986, the BIA moved the Northern California Agency without consultation with the Tribe from its 120 year location on the Hoopa Reservation to Redding, California, where it is located today. Most of the expenses to move the Agency were paid for with funds that were allocated for delivering services to Indian people.

For years, the Tribe worked with the Congress and Administration to develop a comprehensive legislative solution to the underlying legal and political problems of the Hoopa Valley Reservation. After several hearings and continuous work with the BIA and members of the Yurok Tribe, the President signed into law the Hoopa-Yurok Settlement Act, Public Law 100–580, over the recommended veto by the Assistant Secretary of Indian Affairs for no legitimate reason. The Hoopa-Yurok Settlement Act helped to pave the way for implementing the Self-Governance Demonstration Project on the Hoopa Reservation. It is against this background that the Hoopa Self-Governance Demonstration Project must be understood, analyzed, and evaluated.

SELF-GOVERNANCE DEMONSTRATION PROJECT PLANNING IS ESSENTIAL

Being one of the first Self-Governance Demonstration tribes, beginning in 1988 the Hoopa Tribe received 2 annual planning grants which totaled $200,000. During the first 18 months of the planning grant process, the Tribe reviewed past BIA/Tribal activities and relationships to determine what effects, if any, the Self-Governance Project would have on existing and future Federal/Tribal relations and program operations.

Prior to the Self-Governance Demonstration Project, due to the multi-Tribe Agency Indian Priority System (IPS) during a five year period the Tribe's natural resource programs were reduced by over 50% by diverting Hoopa funds into programs more beneficial to the smaller non-resource tribes. Because of this problem, in 1988, the Tribe, Agency Superintendent and Area Director established a "Hoopa Set-Aside" budget that could not be accessed by other tribes. While the Tribe continues to have concerns with the Tribal set-aside funding allocation criteria, the Hoopa Agency budget was already determined prior to the Self-Governance Project, most of the problems concerning the Tribe's share of the Agency budget were already resolved. However, now, if the Hoopa Tribe were to re-direct the funds from the 50% reduction back to the original accounts from which they came, the other tribes would be "negatively affected" which is not allowed under Title III. Therefore, the Hoopa Tribe must suffer with limited budgets and try to identify other funding sources outside of the Northern California Agency budget if we are to achieve our share of BIA funding.

Most of the work during the planning phase was concentrated on developing concepts and scenarios for the Self-Governance Compact and developing internal mechanisms for assuming the new policy and implementation role of our Tribal Government. Knowing that the Tribe would assume the role of the "funding agency", the Tribe placed heavy emphasis on developing our internal infrastructure. As part of the infrastructure building process, the Tribe either developed or planned internal Tribal laws and procedures for areas, such as: Amendments to the Tribal Constitution; Revision and update of the Tribal Court procedures and rules; establishment of a Legislative Procedures Act; enactment of a uniform travel and expense ordinance; development of a comprehensive land ordinance; revision and update of the election procedures; revision the Tribal Employment Rights Ordinance and establishment of an Employment Relations Commission; enactment of a Reservation-wide Conservation/Trespass Act; development of a Tribal Grand jury; development of a long and short range planning process through Management by Objectives; development of a long range plan for reorganization of the Tribal structure and service delivery; development of an endowment plan for long-term Tribal financial self-sufficiency; and,

development of a comprehensive planning and regulatory process for Reservation development.

The selection process for identifying these areas involved such criteria as; the impact and influence of problems and issues on the overall stability of the Tribal Government; facilitating long range planning and eliminate crisis management; developing internal problems solving capability; establishment of procedures for addressing concerns regarding various rights and legal matters involving the Tribe's exercise of sovereign authority; and, reducing the influence on Tribal and Reservation affairs by outside agencies.

OBSTACLES ENCOUNTERED DURING THE PROJECT

Most of the problems that we encountered during the initial phases of the Project were in the areas of funding information and the BIA decision-making process. First, in the area of funding information, three problems came to light: (1), that the BIA could not provide adequate and timely budget information to the Tribe; (2), that the Tribe did not have a method of assessing the validity of the information that we did receive; and (3), without knowing the ability of the BIA to reorganize, the Tribe had no method of determining with any accuracy our fair share of funding within the BIA. After the first year's negotiations were concluded the Tribe received a total of $56,000 in additional funds; $45,000 from the Central Office, $3,000 from the Area Office, and $8,000 from the Agency. Most of the funds available from the Area Office level were divided based on a 1/94th share, regardless of whether a program, service, activity or function could be implemented within each of the 94 tribes in the State. We are also experiencing funding problems in the areas of roads and law enforcement.

Regarding roads, even through the BIA has agreed to the amount of funding that the Tribe is entitled to receive from the Area Office roads 1992 budget, such funds have not been made available because the BIA needs the Hoopa share of the budget to stabilize their program. Concerning law enforcement, BIA officials are well aware of the law enforcement problems on the Hoopa Reservation, including the Tribe losing over one million board feet of merchantable timber from trust lands each year due to theft. Task Forces have been dispatched to Hoopa to assess the situation, however, to our knowledge no written reports have ever been filed concerning their findings. As part of the Tribe's effort to control the situation, we enacted a conservation/trespass law, hired our own police officers, and have attempted to stabilize our police force by contracting such programs as the Marijuana Eradication and Reconnaissance Team (MERT). The BIA response has been "sympathetic" at best, however, in a May 15, 1991 report for GAO, they stated that the BIA's management of the MERT program is "vulnerable to fraud, waste, and abuse and that internal controls should be strengthened".

The Self-Governance Demonstration Project is forcing issues to the surface that the BIA has typically ignored in California. The fact that the Sacramento Area Office receives the lowest BIA Area Office funding in the Nation is a perennial problem exposed by the Project. For example, the Hoopa Tribe is the largest in the State, and is the only Tribe with significant resources in the Northern California Area. The majority of the funding at the Agency and large portions of Area Office funding is directly attributable to the Hoopa land and resource base. However, because Title III mandates no negative impacts to other tribes, our Tribe must forego funds for which we would be otherwise eligible to receive simply because no other funds are available to offset the reduction in funding if the Hoopa Tribe takes its share. Therefore, the Hoopa Tribe will never receive all the funding for which we are entitled. The Self-Governance Demonstration Project is raising serious questions for the BIA within California regarding limited funding and violations of trust obligations. It has become obvious that there has been more cost to the responsibilities of the Tribe under the programs, functions, services and activities assumed than funds to pay for those responsibilities.

Concerning the decision-making process, based on our past relationship with the BIA, it has been clearly understood by the Hoopa Tribe that if the SGDP is successful, it will require changing the existing decision-making system to one that is more pro-active to tribal concerns. For example, based upon past Hoopa/BIA negotiations there is little incentive for the BIA to make any decisions that are not typical in nature. Anything outside the normal course of business (and not clearly *authorized* by regulations) seems to become a chore to work through the approval process. Given that the SGDP is not a typical program, it became apparent early that a different decision-making process must be developed in order to develop and implement a "new" way of doing business. Also, because of the inherent problems and conflicts in the BIA, it would be very beneficial to have a new decision-making proc-

ess that did not carry with it the existing bureaucratic process of the BIA. Therefore, the Hoopa Compact of Self-Governance contains a streamlined decision-making and negotiation process that is designed to achieve more timely decision on management and operational matters.

We are encouraged by the support demonstrated by Secretary Lujan, Assistant Secretary Brown and William Lavell, Director of the Office of Self-Governance, each of whom have helped to create a cooperative atmosphere for the Project. However, this is not to say that all problems with the BIA have been resolved. Even in 1991, we continue to have to subsidize with Tribal funds every BIA program which we have assumed on at least a dollar-for-dollar basis just to maintain minimum service delivery. It has been suggested to us by BIA officials that rather than funding these programs that we should invest in litigation that would force the BIA to honor their trust obligation to the Tribe.

IMPLEMENTATION OF THE PROJECT

Most of the activities surrounding implementation of the Project during the first year have been concentrated on the transition of programs, functions, services and activities from the BIA to the Tribe. Many internal mechanisms have been incorporated into our Tribal Governmental infrastructure. During this transition phase, the Tribe is still developing and refining our internal systems in areas of reporting, Tribal goal setting and evaluation procedures, and funding priority setting. The Tribe remains concerned, however, about the uncertainty of future funding since we have not yet stabilized, or even know, what the base funding and short-fall possibilities hold for the future.

RECOGNITION OF THE NEED FOR STABLE TRIBAL GOVERNMENTS

In order to fully implement the opportunities that were created by the Self-Governance Project, tribes must be able to stabilize their governments, both financially and politically. Oftentimes, political problems are created because of the lack of sufficient funding to fulfill the responsibilities Tribal Governments have assumed. Tribal governments must be treated by the Congress with the same recognition and respect that are afforded to other governments in this country. Obviously, the Federal Government has helped to stabilize state and local units of governments by providing secure funding bases. Tribes need financial and political stability to achieve their goals.

RECOGNIZING THE NEED FOR INTERNAL TRIBAL STABILITY

While financial stability can be addressed by the support of the Federal Government and the Congress, Tribal political stability will come only as a matter of Tribally initiated efforts. Again, the Self-Governance Demonstration Project creates new opportunities through the development of a "partnership", the parties of which are the Congress, the Federal Government and the Tribe. In order to maintain this partnership relationship, the Tribe must be able to effectively manage its affairs with accountability and responsibility. We have reviewed our internal strengths and weaknesses as a government. During the planning stage of this Project, as well as our initial implementation, we have instituted many internal measures for improved Tribal accountability both for our people and to our partnership relationship.

Tribes participating in the Self-Governance Demonstration Project must conduct honest assessments of the financial and political stability of their governments. As self-governing tribes, we have the responsibility for correcting the weaknesses within our governments. We fully support the provision of H.R. 3394 that requires a planning phase before negotiating with the United States to develop and implement a Self-Governance Demonstration Project. We also believe that to be successful in implementing the Self-Governance Demonstration Project, tribes need to be assured a minimum planning grant, at least as implied in H.R. 3394 at $50,000. The insight gained by a tribe during the planning phase can be a tremendous benefit in preparation for the negotiation and implementation phases of the Project.

RECOMMENDATIONS ON INCLUSION OF IHS AND OTHER INTERIOR DEPARTMENT AGENCIES IN THE PROJECT

While we haven't solved all of our problems, under the Self-Governance Demonstration Project we have enjoyed a better working relationship with the BIA. The Project has provided us the necessary flexibility for delivering better services to our people through localized program and service management. Only after the first year's implementation of the Project, we have already realized benefits to our

people through increased budgets for education programs and real estate management. It is important to note that although the increased funding for real estate management accomplishes a needed Tribal objective, it has also begun to resolve long-standing problems between the United States and the Hoopa Valley Tribe by more efficiently managing the trust property on our Reservation. This is one example of the potential of the Self-Governance Demonstration Project to resolve problems and conflicts between an Indian tribe and the United States relating to treaty and service obligations.

The benefits of the Self-Governance can be best demonstrated when one compares actual services being delivered to our people under the BIA budgets operating under the Hoopa Self-Governance Project and the Indian Health Service programs operating under Self-Determination Act contracts.

In 1988, our Reservation's only emergency room closed along with the operations of the Klamath-Trinity Medical Center. We began working with the Indian Health Service to respond to the loss of the emergency services. Since that time, our emergency patients have had to be transported in an ambulance to the nearest hospital, approximately 1½ hours away over winding roads through mountainous terrain. In a 1981 report, the Indian Health Service deemed the now closed Hoopa hospital a matter of life and death to the residents of the area. Presently, most of the medical services for the area are delivered by our Tribal-chartered health association.

In early discussions with the IHS regarding re-establishing emergency services in our area, it was agreed that the long-term stability of our health care system would depend on providing comprehensive service to the total population, not just for Indian people. It was agreed that in order to maintain stable emergency and other health services the non-Indian population needed to utilize the Reservation's health care system, thereby raising needed revenues. Since the Indian Health Service did not have a working model for developing such a comprehensive system, the Tribe was awarded two grants to develop an "Alternative Rural Model" which would serve as an example for solving these problems throughout Indian country. The Tribe has continued to develop the Alternative Rural Model, including developing mechanism for demonstrating how the Tribe and non-Indian residents of the area can join forces for the purpose of providing better health care services for Indians and non-Indians alike.

To date, the Tribe has successfully completed the necessary feasibility studies and analysis for operating a cost-efficient emergency room and four limited care holding beds from the previously closed hospital facility. The results of our feasibility project has been used by the Congress during the passage of the rural health demonstration legislation last year as an example of how these same problems can be overcome in smaller rural Indian communities throughout the Nation. A positive process to address rural health needs has unfortunately been stymied and virtually halted by the bureaucracy of the Indian Health Service Self-Determination contract process.

It is fair to say that what started to be a very beneficial opportunity for addressing a life and death situation on our Reservation has ended in the Sacramento Area Indian Health Service Office almost completely extinguishing any creativity in solving these health care problems. Tragically, for the past year the Sacramento Area Office has used every imaginable bureaucratic ostacle to complicate this project.

First, consistent with the concept of the Alternative Rural Model the Tribe decided to expand the composition of our Tribal health board to include three representatives of the former owners of the hospital facility. The IHS responded by declaring the expanded health board would not be contract-eligible because it now included non-Indians among the board members. After the Tribe appealed the Area Office decision to the Headquarters Office, the IHS legal counsel agreed that the Area Office interpretation was not consistent with Self-Determination regulations. Unfortunately, since it took seven months to have this single issue resolved, the Tribe directed consultants working on this project to cease all work in March, 1991.

Finally, after becoming totally frustrated with the Area Office problems, we decided to simply have our Tribal Council assume the health care contract, and by doing so the Tribe would be solely responsible for the administration of health care services on our Reservation, free from IHS involvement in our internal affairs. Now, the Area Office has determined that in order to simply place the Tribe's name on the contract, and all services, personnel, assets and support services will be delivered exactly as they are now, it will require dissolution of our health program and an additional six months review by the Area Office. This dissolution would require terminating the employment of all employees, issuing new health care provider numbers, assessing the Tribe's capabilities for administering a Self-Determination contract, and liquidating the assets of our Tribal health program.

We started the implementation phase of the Alternative Rural Model in September, 1990. Tragically, since that date we have spent more time discussing bureaucratic regulations and why problems cannot be solved than we have spent discussing how to improve health service for our people. All of this bureaucratic self-preservation attitude is purposely designed to keep the federal bureaucracy from changing and, unfortunately, is being perpetuated at the expense of basic health care to Indian people. The Indian Health Service has forgotten that their primary purpose is to deliver the best quality health care for Indian people, not to run their bureaucracy in a way that is detrimental to quality health care. At least on our Reservation, expansion of the Self-Governance Demonstration Project to include the Indian Health Service is truly a life and death situation.

We urge the Committee to amend H.R. 3394 to include a planning and implementation model phase for IHS. To address the above-mentioned difficulties, the Hoopa Valley Tribe volunteers to work with IHS to develop a Self-Governance Compact model.

Regarding Interior Department agencies, the Tribe also urges the Committee to include other DOI agencies as eligible for assumption under the Self-Governance Demonstration Project. The Hoopa Tribe has been tremendously effected by Bureau of Reclamation and U.S. Fish and Wildlife Service management of Tribal resources. Such as our relationship with the BIA has improved while operating under the Self-Governance Project, we believe the same result can be achieved with other DOI agencies as well.

TRIBAL VISIONS FOR THE SELF-GOVERNANCE DEMONSTRATION PROJECT

The Tribe believes that the Self-Governance Demonstration Project holds many of the keys for addressing Reservation problems by providing a mechanism for looking at Tribal priorities rather than federal regulations. However, there are certain fundamental needs for continued success of the Project.

The Self-Governance Demonstration Project needs to be kept in focus as to its demonstration nature. We do not believe it wise to broaden the project in a manner that would create an overwhelming number of new tribes as the BIA and Office of Self-Governance are simply unprepared for major structural changes. We are concerned that broadening the project to include more than the 30 tribes proposed will provide the BIA with weapons to create sizeable non-participating tribal opposition. We believe that the Self-Governance Demonstration Project will have tremendous benefit for all tribes, the federal government, and Congress if it is allowed sufficient time to create a good foundation including an analysis of the strengths and weaknesses of the operation.

The Self-Governance Demonstration Project provides a mechanism whereby fundamental problems that inhibit Reservation development within the framework of the federal regulatory process can be addressed. For example, federal regulations that are intended to maximize revenues from Tribal timber sales to outside buyers become obstacles that prevent the Tribe from increasing profits if those regulations are applied in the same manner to our Tribal business enterprises. In effect, the Tribe is placed into a position of competing against our own enterprise, which in turn undermines our Reservation economy. To correct this problem, the Tribe is considering the development of a Tribal Trust Administration Office that would oversee, not undermine, the new responsibilities for which the Tribe has assumed.

There is a need for participating tribes to become involved and understand the federal budget process. We believe that the BIA budget process is plagued by a maze bureaucracy that only a few individuals understand. If tribes are to be the real beneficiaries of funds allocated by the Congress for their benefit, then a deliberate effort must be made by the BIA to empower Indian tribes by providing understandable and timely budget information so they can participate in the process. Until such events occur, we believe that the Self-Governance Demonstration Project provides an excellent opportunity to simplify the budget process by eliminating unnecessary layers of bureaucracy from the process. In addition, the Tribe is becoming concerned that in recent correspondence with the Tribe concerning funding, the BIA seems to be staging an "equity" fight between tribes. We believe this is an irrational position for the "trustee" to place themselves into, simply to bury its internal management problems under a smokescreen of controversy. As you know, the obligations of the United States to Indian tribes are not based on equity, but rather is based on the obligations to which it is committed under the principles of trust responsibility. We urge this Committee to continue its pressure on the Administration to increase Indian appropriations to a level that meets their trust obligations to all Indian tribes.

We request that this Committee send a signal to other agencies, including the Indian Health Service, that clearly identifies them as potential new agencies for participating in the Project. We realize that we still have not resolved all the problems which we have encountered with the BIA during the implementation phase of this Project; however, when the time comes to begin looking at other agencies it should be a smooth procedural flow and should not require monumental changes to legislation.

Finally, we continue to be interested in the concept of "New Federalism". Like the Self-Governance Demonstration Project, the New Federalism concept carries the same ideals of empowering Indian tribes to become active participants in designing programs, activities, functions and services that have the greatest opportunity for addressing the priorities and needs of Indian people.

As a broader note specifically for California tribes, we appreciate the support demonstrated by Mr. Miller for addressing problems of the tribe throughout our State. We urge this Committee to support Mr. Miller in his attempts to develop long-term comprehensive solutions facing the tribes in California. As have solutions been developed under the concept of Self-Governance, we believe that California tribal issues can be resolved once a mechanism is in place that can ensure tribal participation in the development of a comprehensive approach.

CONCLUSION

When considering the success of the Self-Governance Demonstration Project, the Federal Government and the Congress should keep in mind the amount of expense, time and effort that has been put into solving problems in Indian Country over the past several decades. Of course, many of the identified solutions have not been implemented. The bottom line is that the solutions to Indian Country, first and foremost, must be founded on the recognition of a partnership relationship between the United States, as trustee, and the tribes, as the beneficiaries. The Self-Governance Demonstration Project is real, is Tribally driven, and is being implemented in spite of the obstacles that we have encountered over the past 3 years. We are encouraged that the Project provides our Tribe opportunities to look at new and innovative methods of addressing age old problems.

Again, we appreciate the leadership provided by this Committee on the Self-Governance Demonstration Project and for providing us an opportunity to express our experiences regarding the Self-Governance Demonstration Project. We support passage of H.R. 3394 with our recommended amendments.

Mr. RICHARDSON. Okay. The Honorable Lloyd Powless.

Mr. POWLESS. My name is Lloyd Powless. My Oneida name Te Ha Kha Hes [His Strides Are Long], and I am a member of the Oneida Tribe and the Turtle Clan of that Tribe. We are a part of the Iroquois Confederacy, and the Iroquois Confederacy had a big impact on the starting of this Nation in that it gave a lot of the philosophy of democracy and representative government.

We are not a part of the current process for self-governance grants, but we are in support of the legislation. In fact, I heard earlier in the hearing that there is this suggestion that it should go to 35 tribes. We would be supportive of that.

We think that as this legislation is better understood by more tribes, small, medium or large, that they will want to be part of this process.

We are from the State of Wisconsin, originally from New York State. We have approximately 11,000 members. Approximately one-third of those live on or near the reservation. We have about—our current budget, or the budget we just finished is about $85 million. We have successfully gone through single audits, the single audit system for many years.

And we learned some from Federal and State governments, and that is deficit spending. And, with deficit spending, we decided after two years of that that we would use a fairly, not unique process, but kind of just going by textbook, of controlling our spending

and trying to develop additional revenues. And with that we finished this year with a surplus and presented a balanced budget to our Tribe for approval.

Our system has—our General Tribal Council make approvals of these types of documents. That means all members 21 years and older will hold a meeting with a quorum of 75 members, and they approve what the Oneida Business Committee does, which is our tribal government. I am currently a Councilman on that Oneida Business Committee, having just finished my ninth year.

There are a few points that we would like to stress on this. We in the past, I would say 10 or 15 years, have had an explosion of growth through gaming, cigarette sales, and getting more proficient at obtaining various Federal, State and local grants. We believe in self-sufficiency and have started to wean ourselves from these various grants.

We feel that the Self-Governance Project is another step in strengthening sovereignty, our treaty rights, and our future.

We are a little disillusioned that all grants and agency funds are not included under this especially and we wanted to highlight education. We have a K through 8 school that we run through our School Board. It is basically an autonomous agency within our Tribe. We had to do this because the local school districts—and we are fairly unique because our children go to five different school districts. We started this school because they were not offering, and would not offer no matter how much we negotiated, language and culture classes on the Oneida Tribe. And, as most tribal people here know, we are in a constant state of survival to maintain our culture, our history, and our language. This is not being offered in the public schools, so we started the K through 8 school.

It is very important that we control education dollars. Just a little history—my grandfather barely made it through grade school. My father barely made it through high school. I am a college graduate and I am taking graduate courses at this time, at 46 years old. My son is a fourth-year college student and has probably higher aspirations. That is the reason I am taking graduate courses, so I can keep up with him. But this is the—the general development things within our Tribe. We believe in education and we try and stress it through all of our systems.

As you go down to the other agencies that may not want to be part of this or are not for very reasons, Indian Health Service, roads, et cetera, we feel we are at a point in our Tribe that we want to take on all of these things because we feel we can do a good job with them. In fact, our reservation is 65,000 acres and I think that the roads situation, where we get funds for roads, we turn it over to counties, or to towns to maintain those roads is getting to be an issue with us. We feel that we can probably do a better job.

I think even if we went with our tribal thinking, our cultural thinking, we have to make decisions based on the next seven generations. And I would think that in the next seven generations we would take care of all of the roads within the reservation for the non-Indian, because I think we will be able to do a better job.

This is the kind of thinking that we do with the Oneida Nation in Wisconsin, that we can do all these things. Some of the ques-

tions have been about for the smaller tribes, et cetera. I think a tribe wherever it is when it is ready should be part of this program. It is a step that we all have to step and that we need to take, whether it be starting a tribal court, a law enforcement agency, handling your own grants or what have you.

With that, again I want to say that I support—we, the Tribe, support this program. We look to the future and see that there will be many more than 30 tribes that will be involved in this as you look down the line, and that this is another step in tribal sovereignty.

Thank you.

[The statement of Mr. Powless follows:]

TESTIMONY OF THE ONEIDA TRIBE OF INDIANS OF WISCONSIN

The Oneida Tribe of Indians of Wisconsin offers this testimony in support of S. 1287 Amendments to the Tribal Self-Governance Demonstration Project (SGDP) Act which authorizes participating tribes, under an annual funding agreement with the Secretary of the Interior, to plan, consolidate, and administer programs, services, and functions administered by the Bureau of Indian Affairs and to redesign programs, activities, functions or services and reallocate Federal funds. These amendments would extend the demonstration period three (3) years to afford tribes a reasonable period of time to determine whether this form of government to government relationship with the United States is an option that the Congress should make available on a permanent basis. These amendments would also increase the current number of authorized tribal participants from twenty (20) to thirty (30) and result in a broader sample from which Congress can examine the strengths and weaknesses of the Self-Governance Demonstration Project. Further, these amendments would require that all tribes electing to participate in the Self-Governance Demonstration Project must first go through the planning process and conduct budgetary and legal research, internal planning and organization preparation activities, and develop a negotiating process. Finally, these amendments would authorize $700,000 to fund the additional ten (10) tribes to be added to the original program.

Two commissions, the American Indian Policy Review Commission of the U.S. Congress (1975–77) and the Presidential Commission on Reservation Economies (1984), found that the BIA and many past policies of the U.S. government stifle tribal efforts to achieve social, economic and political self-sufficiency. Both commissions also found that the BIA should be restructured to focus on the protection of Indian tribes instead of managing the affairs of Indian tribes. Both commissions found that the BIA uses a disproportionate amount of congressionally appropriated funds to support its own operations instead of providing adequate assistance and support to Indian tribes. Finally, both commissions found that transferring funds and functions from BIA directly to Indian governments and correspondingly reducing the size of the BIA bureaucracy would increase tribal accountability through local autonomy and streamline the BIA into an agency which protects instead of manages Indian tribes.

The Tribal Self-Governance Demonstration Project was initiated to accomplish a reduced direct federal involvement in the management of Indian tribes. It is also designed to resolve problems associated with multi-tribe BIA agencies, reduce the size of the BIA bureaucracy, allow more direct local decision-making by tribal governments, and stabilize the level of BIA appropriated funding. The federal burden for administering many social and economic programs to self-governing tribes would decline over a period of year of years as functions and resources are transferred through negotiated compacts. Correspondingly, the structure of the BIA and its personnel burden should reduce with the conclusion of each Self-Governance Compact. This approach has the advantage of increasing local decision-making at the tribal level and reducing federal Indian affairs management functions with a corresponding emphasis on trust protection responsibilities. The systematic transfer of resources and responsibilities from the BIA to tribal governments is the next logical step toward achieving true Indian self-determination.

The Oneida Tribe of Indians of Wisconsin is a federally-recognized Indian tribe consisting of 10,000 enrolled members nearly half of whom live on a 65,000 acres reservation located near Green Bay in northeastern Wisconsin. The Oneida Tribe is considered to be one of the more successful and progressive Indian Tribes in the United States. Our accomplishments over the past two decades have demonstrated our capacity and ability to provide for the general health and well-being of our

members through the use of federal and State of Wisconsin funds and those revenues obtained from our private enterprise initiatives. For example, a short two decades ago, the unemployment rate on the Oneida Reservation exceeded 70%; today, through the efforts of the Oneida Tribe using the resources available to it and through the foresight of Tribal leaders, the unemployment rate has been reduced to less than 20%. A 20% unemployment rate is still unacceptable to us, but the fact that it has been reduced to this level in this short period of time indicates that the Oneida Tribe can accomplish what it sets out to accomplish. During this period of time, the Oneida Tribe qualified for and administered nearly every form of BIA grant and contract assistance program available, and, as the Tribe's annual audit record shows, the Tribe managed these grants without significant problems. Further, this record has enabled the Oneida Tribe to obtain the kind of private sector support which has resulted in dramatic economic growth and a substantial improvement in living conditions among Tribal members on the Oneida Reservation. The Oneida Tribe is on the verge of realizing its goal of becoming a self-sufficient, self-sustaining Indian tribe, and the closer we come to achieving this goal, the more the People of the Standing Stone reiterate their desire to achieve this status.

The challenge of our future is to develop or create enduring social and economic structures in keeping with our local goals, resources and cultural values. This responsibility rests with the governing body of the Oneida Tribe, the leadership of our community institutions, and the active participation of our members. The development of self-sufficiency is predicated on the ability of the Tribe to determine our own future and to direct our resources into efforts which will strengthen our governance capabilities, promote and enable economic progress, and protect and enhance the health and well-being of individuals, families and the community. The attainment of self-sufficiency is based on our ability to develop a strategy and to plan, organize, and direct resources in a comprehensive manner to achieve long-range goals.

S. 1287 provides the opportunity for the Oneida Tribe to obtain and assert a greater degree of local control over Federal resources so as to direct these resources into those areas determined by the Tribe to be critical to our long-range development as a self-governing Indian tribe. S. 1287 will open additional slots to be filled by ten (10) tribes. It is our understanding that few Indian tribes in the upper Midwest region of the United States are currently participating in this Project. Given the opportunity to participate, the Oneida Tribe will broaden the sample of experience available for review and evaluation by Congress.

Further, the requirement that all participating tribes go through the complete process of planning in order to conduct budgetary and legal research, conduct internal government planning and organization preparation, and develop a negotiation process is an amendment the Oneida Tribe strongly supports. While the Oneida Tribe has developed systems and structures which enable it to respond successfully to opportunities arising out of federal and state initiatives, the Tribe must develop the internal systems and structures which will enhance its decision-making process given the expanded power provided by Self-Governance Demonstration Project. The Oneida Tribe is anxious to meet this challenge.

In conclusion, the Oneida Tribe of Indians of Wisconsin endorses and supports S. 1287 and urges passage of these amendments.

Mr. RICHARDSON. Thank you. I want to mention to my colleague from Arizona the staff has just informed me that the Duro bill, the bill that the Senate has sent over, may be on the floor shortly. So I think he and I are going to have to excuse ourselves.

Do you have any statement?

Mr. RHODES. Let me just ask one quick question of Mr. Powless. Assuming this legislation passes, and I am rather sure it will, are the Oneida potential participants in the Demonstration Project?

Mr. POWLESS. Well, I could give you probably a good reason for being part of the Project and the problems that we have with bureaucracy. We have applied a couple of times and have not been able to get into the system. The more recent time that we applied we were instructed through the grant package to submit to the Area Office. We did that. And, when our grants writer checked on the grant to see how it was doing, if there was anything that needed to be done, they said that it was not sent on to Washington,

where it is supposed to be sent, and therefore we would not be part of—it would not be reviewed.

We are here as part of this to stress that, and we will be meeting with Mr. Lavell about this issue. But we do want to be part of the system.

Mr. RHODES. Thank you.

Mr. RICHARDSON. I would like to mention that the hearing record will remain open for two weeks for additional statements and testimony and questions from members.

To the three distinguished witnesses, we thank you. We apologize for having to leave, but we have the Duro bill which we have to attend to. Your testimony has been very useful, all of you, and we will move forth to incorporate many of the good suggestions that you have made.

The hearing is adjourned. Thank you.

[Whereupon, at 10:59 p.m., the committee was adjourned.]

APPENDIX

OCTOBER 3, 1991

Quinault Indian Nation

LUMMI INDIAN BUSINESS COUNCIL

JOINT TESTIMONY

OF THE

QUINAULT, LUMMI, JAMESTOWN S'KLALLAM, AND HOOPA

INDIAN TRIBES

FOR THE

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HEARING ON H.R. 3394

THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT

EXTENDING THE AUTHORIZATION OF

TITLE III OF P.L. 100-472

October 3, 1991

JAMESTOWN KLALLAM TRIBE

HOOPA VALLEY BUSINESS COUNCIL

This joint testimony provides the shared views of the Quinault, Hoopa Valley, Lummi, and Jamestown S'Klallam Indian Tribes regarding H.R. 3394, the "Tribal Self-Governance Demonstration Project Act." Individual testimonies, for each Tribe, will be submitted separately in order for each Tribe to present its unique perspective.

Our Tribes were among the original ten Tribes to participate in the Self-Governance two- year planning period and represent four of the first (seven) Tribes to successfully negotiate Compacts of Self-Governance and Annual Funding Agreements with the Interior Department for Fiscal Year 1991. Based on our experiences, we appreciate the opportunity to testify on the historic Self-Governance Demonstration Project, to express our support for H.R. 3394, to extend the authorization for Title III of P.L. 100-472, and to offer some proposed amendments to H.R. 3394.

The Self-Governance Demonstration Project authorizes Tribal governments, at their option, to negotiate with the Interior Department to transfer Bureau of Indian Affairs "programs, services, functions and activities" to the Tribes through Compacts of Self-Governance and Annual Funding Agreements. These Compacts and Annual Funding Agreements: (1) protect the trust relationship that the United States has to the Tribes; (2) allow Tribes to consolidate, redesign, or otherwise change the Bureau programs; (3) provide for financial resource transfers in a simplified form; (4) allow for Secretarial waiver of inhibiting rules and regulations to be replaced by Tribal guidance documents; (5) require mutually determined baseline measures of progress reported semi-annually by the BIA and Tribes to Congress; and, (6) create the opportunity for Tribal Councils to determine their own program priorities and allocate resources accordingly.

This Demonstration Project, beginning its second implementation year, is intended to empower Tribal governments with the decision-making authority and responsibilities which sovereign governments are rightfully entitled to exercise. The Project also intended to reduce the BIA bureaucracy and to assure that a greater proportion of Federal funds actually get to the local Tribal levels.

I. The Self-Governance Demonstration Project has been a Tribally driven initiative made possible through Congressional authorization and appropriation support.

The Self-Governance Demonstration Project was proposed by Tribes frustrated with a BIA bureaucracy still reluctant to change its role from a service provider and manager of Tribal affairs to a government contractor twelve years after passage of P.L. 93-638, the Indian Self-Determination and Educational Assistance Act of 1975.

In the Fall of 1987, while the draft amendments to the Indian Self-Determination Act were in the early legislative process, a series of Arizona newspaper articles blasted the Federal Indian bureaucracy. The Arizona Republic's "Fraud in Indian Country" series portrayed an inept, wasteful BIA. Chairman Yates of the House Interior and Related Agencies Appropriations Subcommittee held an oversight hearing in late November on the Arizona Republic's charges. Then Interior Secretary Hodel and Assistant Secretary for Indian Affairs Swimmer attempted to explain away the newspaper allegations. In obvious frustration and perhaps to divert Chairman Yates displeasure, Swimmer suggested that the BIA monies should be turned over to the Tribes to let them manage their own affairs. After Chairman Yates met with Tribal representatives on the Swimmer proposal and further dialogue ensued at the Interior Department the following day, ten Tribes, including our four Tribes, volunteered to test the proposal.

Without consulting with the Tribes, however, the Interior Department proposed Section 209 as an addition to the Indian Self-Determination Act Amendments in December, 1987. Section 209 proposed a resource transfer of funds which the Tribes currently contracted with minimal impact to the existing bureaucracy. An alarming element of Section 209 was language waiving the Trust Responsibility of the United States for programs assumed by participating Tribes.

The ten Tribes, acting collectively, countered this damaging and unacceptable Section 209 with the Title III Self-Governance Demonstration Project amendment designed deliberately by the Tribes to maintain the Trust Responsibility and to provide a Demonstration Project rather than permanent legislation. In the ensuing political process, the Demonstration Project was: (1) expanded from ten to twenty Tribes; (2) some BIA programs were excluded from the Project; (3) a Secretarial waiver of conflicting laws and regulations was modified to provide an interpretation preference for Self-Governance along with the existing Secretary's waiver authority; and, (4) a provision was added to prohibit the Project from negatively affecting other Tribes.

The basic Tribal purposes for Title III were however preserved; namely, (1) the transfer of BIA resources to Tribal management; (2) broad flexibility for Tribal utilization of those resources; (3) the ability to consolidate and redesign programs; and, (4) a streamlined budget process through the Bureau accounting system. Multiple P.L. 93-638 contracts and grants were replaced by a single Compact of Self-Governance and Annual Funding Agreement.

II. The Self-Governance Tribes successfully complete the planning and negotiation stages and implement the Demonstration Project despite bureaucratic resistance.

Change from the norm is a difficult aspect of life. In Indian Affairs, change is threatening at the Tribal level and next to impossible at the bureaucratic level. The planning phase of Self-Governance, we believe, is critically important in order to successfully pursue Self-Governance. This planning phase was greeted with BIA benign neglect and rumors of potential termination. The Congress and the Tribes repeatedly asked the Bureau for budget data for planning purposes, but only one set of useless computer print-outs was made available. The Bureau's lack of support and assistance in the Project was reflected by the fact that annually the BIA Budget Justification would include no funding for Self-Governance, and Congress would annually provide appropriations. As the BIA supplied no official statement on the Demonstration Project, rumors and innuendos flourished in Indian Country. BIA Central Office personnel in charge of the Project, kept changing and slowly the Self-Governance Demonstration Project began to merge with Bureau programs. The BIA produced no planning documents, rejected proposed regulations to govern negotiations and Project implementation drafted by the Tribes, and provided no technical assistance. Moreover, the BIA attempted to dilute the Demonstration nature of the Project, and gut Tribal planning, by proposing to take the Congressional Planning appropriation for the 10 Tribes and divide it among 50 Tribes. Intervention by the Congress was necessary to reverse this duplicitous chicanery.

Frustrated with the BIA's failure to implement its responsibilities for the Project, our Tribes, with Congressional support, requested a meeting with Secretary Lujan. We met with Interior Secretary Lujan on April 2, 1990 appealing for an independent negotiator for the approaching Compact of Self-Governance Negotiations between the Tribes and the BIA. Secretary Lujan, after direct discussion with the Tribes, indicated his personal support for the Self-Governance Project and on April 28th appointed his Assistant, William Bettenberg, as the Self-Governance Negotiator.

Title III requires a Congressional review of each Tribes' negotiated Compact of Self-Governance ninety days prior to implementation which meant that these Compacts had to be submitted by July 1 for an October 1 or Fiscal Year 1991 implementation. When our four Tribes met with Bettenberg on May 17, 1990, his first time available, to determine a negotiations process, no BIA budget data was available nor had any discernable BIA planning for the Project been accomplished. Through our Tribal planning efforts, model Compacts of Self-Governance and Annual Funding Agreements had been drafted. In those six weeks, a virtual BIA scramble ensued to produce Area/Agency budgets and allocations criteria. Although we did not have the opportunity to review the BIA budgets in detail and were forced by the press of time to accept the numbers as presented, negotiations were completed and Compacts/Agreements were submitted on time. As a footnote, the BIA Central Office was also finally convinced, at the last minute of the negotiations, to participate in the Project with a contribution of $45,000 per Tribe.

Seven Tribal Compacts of Self-Governance were negotiated by Bettenberg including our four Tribes', the Mille Lacs Band of Chippewa, Absentee - Shawnee and Cherokee Nation of Oklahoma.

At the request of our Tribes, the Congress provided funding for an Office of Self-Governance in the Office of the Secretary of the Interior for Fiscal Year 1991 managed by the Assistant Secretary for Indian Affairs. Secretary Lujan established a Self-Governance Policy Council in August 1991, comprised of representatives from the Solicitor's Office and Secretary Lujan's Office headed by Assistant Secretary for Indian Affairs Brown, for policy guidance. The Office of Self-Governance, with William Lavell as Director, began operations in January 1991.

In the last nine months, the Office of Self-Governance has significantly improved the Department of the Interior's performance and attitude towards the Self-Governance Demonstration Project. Seven Self-Governance second year Compacts and ten new first year Compacts have been successfully negotiated and submitted for Congressional review for Fiscal Year 1992. For the first time, since the Project began in 1987, the BIA Fiscal Year 1992 Budget Justification requested support for the Self-Governance Demonstration Project of $3 million for planning, negotiations, Project implementations and shortfalls. And, the Office of the Secretary requested $700,000 to continue the Office of Self-Governance operations and role.

President Bush on June 14, 1991 issued a White House policy statement "Reaffirming the Government-to-Government Relationship between the Federal Government and Tribal Governments." As an example of the Bush Administrations commitment to Tribes, the President's statement provided:

> "This is a partnership in which an Office of Self-Governance has been established in the Department of the Interior and given the responsibility of working with Tribes to craft creative ways of transferring decision-making powers over Tribal government functions from the Department to Tribal governments."

III. The Self-Governance Demonstration Project has confronted varied obstacles; particularly from the BIA.

There is an inherent conflict between the Self-Governance Demonstration Project purpose and the BIA institutional self-preservation norm. Finding altruistic qualities in individuals is rare; attributing altruism to an entrenched bureaucracy would be absurd. The BIA has not been expected to be helpful since a successful Project will reduce the employment level and funding available to the BIA as an institution. With the exception

of irresponsible BIA administration manipulations around planning and research grants, the Bureau, to date, has not exhibited direct opposition to Self-Governance, but rather covert maneuvers and neglect.

The BIA, during the first three years, did not develop any plans for the Project implementation phase despite repeated Congressional directives for budget research and organizational restructuring. The Agency, Area, and Central Offices did not ask or inquire of the participating Tribes as to what we thought they should be doing or providing to facilitate the Project. No budget analysis was initiated before the second year negotiations for the first tier Tribes. The Project is approaching a point, in terms of the number of Tribes negotiating Compacts, that reorganization and restructuring is inevitable. This pressure point coincides with the BIA Reorganization Task Force recommendations and is indeed serendipitous.

The BIA during the initial years requested no appropriations for the Demonstration Project planning and negotiation activities. Each year, release of Congressional appropriations to the Tribes was a difficult adventure with annual lapses in funding. As noted earlier, at one point, the BIA suggested distributing the planning monies among fifty Tribes which would have effectively diminished each Tribe's capacity to plan or negotiate. With no information available to non-participating Tribes about the Project from the Bureau, various negative rumors circulated through Indian Country concerning Self-Governance; at least some of which were traceable to mid-level BIA staff. BIA Agency staff-generated rumors and misinformation continue to be bothersome at the Tribal level.

Self-Governance planning, negotiation and implementation has not been an easy task at the Tribal level. BIA misinformation and inter-Tribal rumors have been a source of constant harassment, particularly in multi-Tribe/Agency situations. The degree to which individual Tribal members maintain ties to the BIA and fear change. has been an unknown dimension up to now. The time required to reorganize the Tribal government, orient Tribal staff to new responsibilities, establish operational mechanisms, and provide for adequate community information and involvement. The time for these tasks was initially underestimated. Changing the Tribal government from a contract service provider to a policy-maker and direct service provider is a substantial undertaking at the Tribal level.

IV. The Self-Governance Demonstration Project should move steadily and deliberately forward at a Tribally-determined pace prior to perfecting a permanent Self-Governance Statute

Self-Governance in terms of Tribal government empowerment, staff implementation, and community understanding and support will require time and experience. We are in the first month of the second year implementation phase. The Project has proceeded quite rapidly to this stage, but we caution that this fiscal year will be critical in establishing our Tribal processes and programs. Substantial time, repetition, exploration of options, and the creation of Tribally-designed government operations will be required before Tribal communities, both their electorate and the service bureaucracy, are comfortable with Self-Governance.

Moving forward too quickly with Self-Governance, however well intentioned, will create political opposition nationally, regionally and at the Tribal level. Self-Governance, a concept often misunderstood and easily distorted, has already created political controversy in a number of Tribal elections. We believe in the Self-Governance process, but time will be necessary to build the required foundations through education and understanding.

We are at an important transition point in the Implementation Phase of the Self-Governance Demonstration Project. The number of Tribes in the Implementation Phase will increase from seven to seventeen this year. There are as yet no guideposts of experience established in this Project. The BIA selection criteria for Tribal participation in the planning process is still a mystery. The Bureau's capability for undermining and tenacity for self-preservation is well known. The Project's back stage status has changed to front stage spotlight with our initial success and the convergence of events in Indian Country. There are many more unknowns in our individual and collective Self-Governance Demonstration future than there are knowns.

A number of well-intentioned proposals have been introduced to provide remedies to the problems and needs that beset Indian Country, including the New Federalism concept and the DOI/BIA/Tribal Reorganization effort. We believe that these ideas have definite merit in their goals, but caution that Indian Affairs is a very complex world not receptive to superimposed solutions. Solutions need to be developed, tested and implemented by Tribal governments at their own pace in order to be successful.

V. Our Tribal Vision is that Self-Governance should proceed in stages with Extensive Planning

We urge that the Self-Governance Demonstration Project advance with a manageable number of Tribal governments. We, the Tribes, have conducted the necessary research, instigated the innovations, and designed the implementation approach to this point in the Project. Significant Tribal efforts and coordination will be necessary in the next two years to establish support and educational mechanisms at both the Tribal and Federal levels, as well as, incorporating new programs into our Annual Funding Agreements. We need to build a sound structural foundation to support Self-Governance at the Tribal and Federal levels. We have the baseline measures in place to document what works, what does not work and why, to guide future Congressional policy considerations. These baseline measures will also have to be reviewed and analyzed to determine if they are sufficient and effective in measuring the success of the Project. We also will be identifying an independent contractor to conduct an assessment of the first year operations under our Annual Funding Agreements.

A flood gate increase of Tribes into the Self-Governance Demonstration Project would require major restructuring and reorganization of the BIA removing an understood process and foundation and replacing it with a structure still in the formative stage. This would create unnecessary confusion in Indian Country and instability in the BIA. The result could be chaos, not progress. The BIA needs to change, and the results of a "controlled" demonstration will provide guideposts for that change.

We believe a clear understanding of the Self-Governance Demonstration Projects' strengths and weaknesses should be achieved with major problems resolved administratively or legislatively, before significant expansion occurs. A detailed plan should be established for a permanent Self-Governance relationship between the Tribes and the Interior Department. Other Tribes should have the opportunity to determine with full knowledge of our experiences whether they desire to enter a Self-Governance Compact relationship, continue their Self-Determination contract relationship, or have the BIA provide direct services to the Tribe. Based on these collective Tribal preferences, we should then understand what a reorganized BIA should look like and we would be in a position to recommend changes and a plan to proceed. The Bureau, would then be reorganized according to Tribally determined needs.

The Self-Governance Demonstration Project should expand step-by-step by Federal program, Agency and Department. For the reauthorization and extension of Title III, we recommend the Congress:

1) include all BIA programs previously excluded in Title III;

2) include BIA programs where eligibility is at all open to question, for example construction and competitive grant programs;

3) expand the Project to all Agencies in Department of the Interior;

4) direct the Indian Health Service to initiate a two year planning phase in preparation for future inclusion under Title III with the establishment of an Office of Self-Governance in the Office of the Secretary of HHS; and,

5) recognize the operations and functions of the Office of Self-Governance in the Office of the Secretary of the Interior.

After IHS Self-Governance Compacts have been implemented, we suggest that other "Indian Programs" in the Federal Departments be directed to enter shorter planning stages depending on the size and diversity of the program. These would include other programs in the Department of Health and Human Services such as the Administration for Native Americans, Administration on Aging and Head Start, the Departments of Housing and Urban Development, Commerce, and Labor. Future consideration should also should be given the EPA, Department of Agriculture, Department of Energy, Department of Transportation and others.

VI. The Demonstration Project Should Include ALL BIA Programs, Services, Functions and Activities To Test Project Worthiness

The concept for the Self-Governance Demonstration Project provided for the experimental transfer of ALL BIA "programs, services, functions and activities" to Tribal Government control and prioritization. Several BIA programs have been excluded from the Project due to:

1. Lobbying and pressure by BIA and constituent groups resulting in Title III legislative exclusions for selected BIA education programs;

2. Questionable legislative authority such as Indian Reservations Roads programs administered jointly by the Federal Highway Administration and the BIA utilizing Highway Trust Funds; and;

3. Administratively excluded BIA programs due to their nature such as the competitive Community and Economic Development Grants program and the Marijuana Eradication Reconnaissance Team (MERT).

We contend that ALL BIA programs should be made eligible for the Demonstration Project and that exclusions and barriers to access are simply protections of the status quo operations by entrenched bureaucrats and misinformed constituents. These established, intractable management systems performing functions more beneficial to the bureaucracy than the Tribes are a primary reason for the need to establish a Self-Governance Project.

Our brief justification for these program inclusions in the Self-Governance Demonstration Project are as follows:

1. BIA Education Program Exclusions Due to Constituent Pressures

During the legislative process to enact Title III of P.L. 100-472, extensive opposition developed in Indian Country, particularly from the education community. Although these opposition individuals and their representative organizations recognize that their programs are a result of the relationship Tribes have with the United States, through treaties and otherwise, they obviously do not trust modern elected Tribal Councils with the authority to manage education monies. The legislative compromise in Title III was the exclusion clause in Title III, Section 303(a)(3) which states:

> "Shall not include funds provided pursuant to the Tribally Controlled Community Colleges Assistance Act (Public Law 95-471), for elementary and secondary schools under the Indian School Equalization Formula pursuant to Title XI of the Education Amendments of 1978 (Public Law 95-561, as amended)..."

Legislation sometimes creates strange bedfellows. The other Title III legislative exclusion, included to address the fears of non-Indian farmers on the Flathead Reservation, was added to Section 303(a)(3):

> "or for either the Flathead Agency Irrigation Division or the Flathead Agency Power Division; provided that nothing in this section shall affect the contractibility of such divisions under section 102 of this Act..."

Our concern is that imagined fears of an unknown future combined with protectionism for existing program operations and control have become acceptable exclusions from the Self-Governance Demonstration Project. How odd, indeed, is the fact that the "Tribally Controlled Community Colleges" and the "Tribally Controlled School Boards" oppose "Tribal Control." Titles can be deceiving.

The Senate Select Committee on Indian Affairs held a hearing on the Title III amendment, to S.1703 on February 18, 1988. A majority of the Self-Governance Tribal witnesses time was spent justifying the inclusion of BIA education programs in the Project and defending the Tribal governments' rights and capabilities to manage education program activities effectively. The Chairmen for the Rosebud Sioux, Tlingit-Haida and Quinault all testified to their respective Tribes long-term priority support to Indian education. The very existence of Indian education programs and their current size and scope is the result of the strong support by Tribal governments of these programs.

Quinault Nation President DeLaCruz's written testimony at the February 18, 1988 hearing is as applicable now as then. He stated:

> *"I am very aware there are those involved in American Indian issues who are most opposed to the Tribal Self-Governance Research and Demonstration Project. Obviously many bureaucrats in the Bureau of Indian Affairs will seek to spread rumors and create controversy due to disruptions and changes in the predicable career vocations they currently enjoy. Others working on behalf of special interests in Indian Country who operate under the umbrella of Tribal governments and their treaties will attempt to limit Tribal sovereign powers regarding their special constituency. Those who fear change or simply don't understand Tribal legitimate rights to govern their own affairs with a minimum of Federal intrusion will simply oppose Title III Section 301 based on their own inhibitions or misunderstanding of reality. And many more are simply comfortable with the BIA-*

Tribal relationship under P.L. 93-638 and S.1703 who see no need for this evolution in Tribal governance. And finally, there are a few whose personal experiences and limited concepts of reality believe that Title III Section 301 will create extensive graft and corruption or that these ten Tribal governments and their leaders are blindly planning to terminate ourselves as Indian Tribes. This last fringe group, of course, will do everything in their power to save us from our madness".

The unfounded fears and self-serving protectionism in the Indian education community need to be exposed by allowing Self-Governance Tribes to incorporate BIA education programs into their Compacts and Annual Funding Agreements. Tribal Councils may choose in their priority budget allocations to increase funding for Indian education or improve educational effectiveness through creative program applications designed at the Tribal level. We will never know unless Congress provides us the authority in H.R. 3394 to include all BIA education programs in the Demonstration Project.

2. BIA program exclusions due to questions on legislative authority

The BIA Roads Construction Program is currently excluded from the Self-Governance Demonstration Project as the Indian Reservation Roads funds are expended from the Highway Trust Fund authorized by P.L. 97-424, the "Surface Transportation Assistance Act of 1982." This authorization allows for Tribes to negotiate self-determination contracts for planning and construction projects approved jointly by the BIA and Federal Highway Administration of the Transportation Department.

The Indian Reservation Roads program virtually replaced the BIA managed roads construction program in 1983 as the Interior Department requested no appropriations for BIA roads construction since enactment of P.L. 97-424. According to the law, funds are to be appropriated each fiscal year for reservation roads construction and improvement for projects identified jointly by the Secretaries of Interior and Transportation. Basically, the BIA requests construction funds for each BIA Area based on Tribal population and miles of reservation roads as well as funds to administer the roads projects. Priority projects identified by each BIA Area are then submitted to the Federal Highway Administration for final approval.

The Secretary of the Interior is designated to oversee road construction and improvement projects. According to Title 23 U.S.C. Section 204(e):

> "(e) Construction of each Project shall be performed by contract awarded by competitive bidding unless the Secretary or the Secretary of the Interior shall affirmatively find that, under the circumstances, relating to such project, some other method is in the public interest. Notwithstanding the foregoing, the provisions of Section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior which are appropriated for the construction and improvement of Indian Reservation Roads."

The BIA has asserted the novel position that although Roads Projects can be contracted under P.L. 93-638, as amended, they are not subject to Title III. We assert that the Self-Governance Demonstration Project full implementation is "in the public interest", and that resources for these Roads Projects should be subject to Title III. Congress, however, should clearly specify its intent to avoid the issue getting lost in the labyrinth of Solicitor's Opinions. We propose that the BIA annual appropriation request to the Federal Highway

VII. The IHS, as the second largest Indian Affairs Agency, should plan and prepare for Self-Governance

We believe the Self-Governance Demonstration Project, through a step-by-step Agency-by-Agency approach, is creating the framework for the future government-to-government relationship between Indian Tribes and the United States. The IHS, as the second largest Indian Affairs Agency, is the next logical participant in this Project. After the BIA and IHS resources transfer models are clearly established to the satisfaction of participating Tribes and Congress, other Federal Agencies with lesser roles in Indian Country should be included. The key element to the success of this Project is that Tribal governments will choose their relationship with Federal Agencies according to their capabilities and circumstances.

Federal Agency planning and preparations for Self-Governance are obviously an important function. In our experience with the BIA, even Congressional directives to plan were not implemented. The Omnibus Congressional Appropriations Conference Report 100-498 on December 22, 1987 directed the BIA to begin research and planning activities for the Self-Governance Project. A similar directive was provided in FY89. Unfortunately, the BIA virtually ignored the directives until mid-May 1991 negotiations with the Interior Department forced their compliance. We expect the IHS to present an even more formidable challenge to this historic initiative.

Therefore, an authorization directing the IHS to initiate planning and research activities, including experimental implementation models with Compact Tribes, is essential to prepare for a future IHS Self-Governance Demonstration Project.

VIII. THE FUTURE OF THE BIA

We believe there will always be a need for the Bureau of Indian Affairs or at least an entity with similar functions. A key issue as a result of this Project will be the redefining of the role and responsibility of the Bureau as determined by the Tribes. A fundamental function will be to serve as the Trust Advocate and Trust Manager for all Tribes and the lead Federal Agency for implementing Federal Indian Policy. The Bureau should continue as a service provider and Self-Determination contractor for those Tribes choosing to remain in the BIA system. And, the BIA could feasibly provide a cost effective service for "some" Tribally agreed upon "National" Indian programs such as a data bank for child abuse programs, manage a Law Enforcement or Court Personnel Training Center, a coordination unit for technical assistance, and other logical operations. The Bureau's role, responsibility, structure and operations, however, would be defined by the Tribes.

IX. Self-Governance Education and Communication should be Maintained to Ensure Understanding by Other Tribes and BIA Personnel concerning the Project Purpose and Progress

As stated previously, the BIA has made no effort to educate other Tribes or their own personnel as to the Self-Governance Demonstration Project. In the middle of our second planning year, the rumors and misinformation had reached a level requiring response. Our four Tribes developed a "Red Paper" entitled Shaping Our Own Future: The Promise of Self-Governance to explain the history, legislative provisions, and plans for the Project. Informational brochures were also developed to highlight Project issues. We held a seminar in Seattle for Pacific Northwest Tribes, made presentations to neighboring Tribal Councils, and mailed information packets to interested Tribes and individuals. We recently held seminars in the Aberdeen, Minneapolis and Phoenix

Administration include a Tribal proportionate share of administration and roads construction project funds included in negotiated Self-Governance Compacts and Annual Funding Agreements. The Tribal Council would expend the funds on roads construction or roads improvements and administrative funds according to Tribally-determined priorities. Feasibly, a Tribe could choose to receive and save its proportionate share over several years to address a major roads construction project. If necessary, the Federal Highway Administration could be involved regionally to ensure that planning, construction and improvement projects are implemented according to Federal Highway Administration standards. The basic premise for this amendment, however, is to give Tribal Councils the authority to identify and administer construction projects according to their own priorities.

3. Interior Department and BIA Administratively Determined Exclusions

Title III of P.L. 100-472 contains the provision that all BIA "programs, services, functions, and activities," whether contracts or grants, are eligible for negotiated transfer to the Compacts of Self-Governance. We contend the statute clearly covers the proposed FY92 Community and Economic Development Grant initiative as well as the MERT. The Self-Governance Policy Council in late June, 1991, determined that these competitive grants or special emphasis programs were not eligible for inclusion in the Compacts at this time due to the potential adverse effect on other Tribes.

In terms of the new BIA Community and Economic Development Grant initiative, a BIA formula was originally established to distribute $50 million to all Tribes; however, the OMB limited this line item request to $10 million and the BIA, determined to make a limited number of grants, calculated at the $50 million eligibility level. Based on the original formula, the Tribes proposed that twenty percent of each Tribes share under the allocation formula be added to the Compacts with the option to compete nationally with other Tribes to achieve one hundred percent funding. We believe through an annual allocation of these community and economic development monies that effective progress can be demonstrated over a multi-year period. The results and benefits will be reported through the baseline measures and provide relevant information for this new BIA initiative.

The MERT law enforcement program, administered out of the BIA Central Office, provides a SWAT Team approach to MERT. This program was administratively exempt from the Self-Governance Compact due to its special emphasis. We contend that Self-Governance Compact Tribes with identified marijuana problems in their areas such as the Hoopa Valley Tribe, should be able to access this program for a Tribally-managed enforcement program.

We realize that the Self-Governance Demonstration Project will meet resistance and create animosities within the bureaucracy as program authorities and related dollars are transferred to Tribal control. All BIA programs as well as Interior Department Agencies should be eligible for the Project. The Project offers the only real opportunity to test this next logical step in Indian Self-Determination, to document problems encountered in the reality of complex negotiations and Tribal management, to the offer evidence based on experience for the fashioning of future legislation.

Areas as well as conducted educational sessions at the request of individual Tribes. Additional seminars are planned for the other BIA Areas in FY92.

Congress recognized the need for continued Self-Governance education and communication by providing financial support in Fiscal Year 1991. We held a workshop for other Self-Governance Tribes in the planning and negotiation stages and have initiated regional seminars for interested Tribes. One education seminar has been made for BIA Portland Area Office staff and future BIA education seminars are envisioned to enhance the understanding of the Project as well as attempt to build a partnership and constructive attitudes to assist in our efforts. Tribal confusion over Title III seems to be abating and support is growing. As the Project evolves, however, the education and communication effort should continue to ensure an understanding of the Project's purposes and progress are maintained.

Responses we have received during our Education Project indicate that Tribes are becoming more interested in the Demonstration Project. Tribes are very interested in receiving more information about the Project, including the pros and cons from our perspectives as first tier Tribes, and receiving more information about the BIA budget process. In addition, Tribes want to receive timely, accurate, and complete information from the BIA regarding programs, services, functions, and activities that they could assume under Self-Governance and the funds they would be entitled to receive if they participated in the Self-Governance Demonstration Project.

X. Recommendations for Amendments to Title III

Basically, our Tribes support H.R. 3394 as introduced. We recommend deletion of current BIA exclusions from Title III coverage and clarification on other BIA programs in a questionable status. We recommend adding other Interior Department Programs that benefit Indians. We also recommend some technical amendments on regulatory waiver and 25 U.S.C. section 81 coverage, direction to IHS to begin a two-year planning phase for Title III coverage including the establishment of an Office of Self-Governance in the Office of the Secretary for the Department of Health and Human Services. We will also need several technical amendments to implement commitments made by the Interior Department in our negotiated Compacts of Self-Governance. To date, these commitments have not been fully realized. The first commitment concerns providing for Tribal access to the cost savings contracts and supplies obtained through the General Services Administration. The second commitment concerns obtaining Tribally relevant exceptions to OMB Circular A-87 (Cost Principles for State and local unit of Government). And, we urge consideration of an oversight hearing in 1992 to address the issue of expansion of Title III to other "Indian Programs" in Federal Agencies beginning with the Department of Health and Human Services.

XI. Conclusion

The basic issue confronting us today is a cumbersome, unwieldy bureaucracy built layer upon layer over the decades being pressured by frustrated Tribal governments yearning for sovereign independence in the management of their affairs and seeking a larger share of the resources allocated for their benefit. The noted scholar Felix Cohen stated it so well many years ago:

> "The most basic of all Indian rights, the right of self-government, is the Indian's last defense against administrative oppression, for in a realm where the states are powerless to govern and where the Congress, occupied with more pressing national affairs, cannot govern wisely and well,

there remains a large no man's-land in which government can emanate only from officials of the Interior Department or from the Indians themselves. Self-government is thus the Indians' only alternative to rule by a government department."[1]

In conclusion, we appreciate the Committee's support in the original authorization of Title III and the consideration of H.R. 3394 to provide for an extension of Title III.

[1] Handbook of Federal Indian Law, 1942; page 122

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